

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

W19-08

Title

Probate Conservatorship and Guardianship:
Qualifications and Education of Appointed
Counsel

Action Requested

Review and submit comments by February 12,
2019

Proposed Effective Date

September 1, 2019

Proposed Rules, Forms, Standards, or Statutes

Adopt Cal. Rules of Court, rules 7.1101–
7.1105; repeal rule 7.1101; revise forms
GC-010 and GC-011

Contact

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Proposed by

Probate and Mental Health Advisory
Committee
Hon. John H. Sugiyama, Chair

Executive Summary and Origin

The Probate and Mental Health Advisory Committee proposes repealing one rule of court and adopting five new rules of court to clarify and amend the minimum qualifications and education requirements for counsel appointed to represent wards and conservatees in guardianship, conservatorship, and other proceedings under division 4 of the Probate Code. The committee also proposes revising two forms for mandatory use by attorneys to certify that they meet the requirements for appointment. The amendments and revisions were suggested by courts, stakeholders, and disability rights advocates to clarify the existing requirements, resolve inconsistencies with statute, promote more effective representation, and simplify the certification process.

Background

Rule 7.1101 of the California Rules of Court was adopted, effective January 1, 2008, in response to the enactment of [section 1456](#) of the Probate Code in the Omnibus Conservatorship and Guardianship Reform Act of 2006.¹ As required by section 1456, the rule established minimum

¹ The Omnibus Act was a package of four separate bills—[Senate Bill 1116](#), [Senate Bill 1550](#), [Senate Bill 1716](#), and [Assembly Bill 1363](#)—enacted as Stats. 2006, chs. 490–493, respectively. Section 1456 was added by AB 1363, § 3. Unless otherwise specified, all further statutory references are to the Probate Code.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

qualifications, hours and content of required education, and reporting requirements for attorneys appointed under sections 1470 and 1471 in guardianships, conservatorships, and other proceedings under division 4 of the code.

Judicial Council form GC-010 was adopted, effective March 1, 2008, to enable attorneys to certify their initial qualification for appointment, as required by rule 7.1101.² Form GC-011 was adopted, effective January 1, 2009, to enable attorneys to certify their ongoing compliance with the licensing, insurance, and annual continuing education requirements in rule 7.1101.³

The Proposal

The Probate and Mental Health Advisory Committee proposes repealing rule 7.1101 of the California Rules of Court and adopting its requirements, as amended, in five separate rules in chapter 23 of title 7 of the rules of court. As required to implement section 1456(a), current rule 7.1101 specifies minimum qualifications, the amount and subject matter of required professional education, and compliance reporting requirements for counsel appointed under sections 1470 and 1471. The proposed reorganization and amendment are intended to distinguish more clearly between the requirements applicable to attorneys appointed to represent children in guardianship proceedings and those applicable to attorneys appointed to represent adults in conservatorship proceedings.

In addition, the committee proposes substantive amendments to the existing content of the reorganized rules to specify initial attorney education requirements, tailor the subject matter of the required education more narrowly to subjects “related to conservatorships or guardianships” (§ 1456(a)(3)–(4)), and provide alternative experience requirements. The committee also proposes revising Judicial Council forms GC-010 and GC-011 to reflect the new structure and content of the rules and to simplify the procedures for attorneys to use to certify their initial qualifications and annual compliance.

Specifically, the committee proposes, effective September 1, 2019:

1. Repealing rule 7.1101 of the California Rules of Court;
2. Adopting new rule 7.1101 to specify the scope of chapter 23 of title 7 of the rules of court and define the terms used in the chapter;
3. Adopting rule 7.1102 to specify the minimum basic qualifications, experience, and initial and annual professional education required for an attorney to accept appointment under section 1470 to represent a ward or proposed ward;
4. Adopting rule 7.1103 to specify the minimum basic qualifications, experience, and initial and annual professional education required for an attorney to accept appointment under section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity;

² Judicial Council of Cal., mins. (Feb. 22, 2008), pp. 13–14.

³ Judicial Council of Cal., mins. (Oct. 24, 2008), p. 31.

5. Adopting rule 7.1104 to clarify the basis and procedure for a small court to waive the experience or education requirements in rules 7.1102 and 7.1103;
6. Adopting rule 7.1105 to specify the requirements for certifying an attorney's initial and ongoing compliance with the requirements in the rules, add a requirement to notify the court of any disciplinary action within five days, and expressly require the use of mandatory forms GC-010 and GC-011;
7. Revising *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to conform to the amended certification requirements and to simplify the certification process;
8. Revising *Annual Certification of Court-Appointed Attorney* (form GC-011) to conform to the amended certification requirements and to simplify the certification process; and
9. In the context of adopting rules 7.1101–7.1105, amending the existing substantive requirements to:
 - Distinguish the basic attorney licensing and insurance requirements from the specific experience and education requirements for each type of appointment;
 - Clarify that a court has the authority to adopt additional requirements by local rule;
 - Specify that an attorney's failure to meet the requirements in the rules, including any local rules, constitutes good cause for a court to decline to appoint that attorney, terminate the attorney's existing appointments, and remove the attorney from a list or panel of attorneys eligible to accept guardianship or conservatorship appointments in that court;
 - Add a requirement that an attorney complete three hours of approved education before accepting an appointment;
 - Specify the subject matter of applicable education related to guardianships, in rule 7.1102(g), and conservatorships, in rule 7.1103(g);
 - Narrow the experience requirements to tailor the applicable experience more specifically to guardianship or conservatorship proceedings;
 - Consolidate the requirements for appointed counsel in a private firm or legal-services provider with those for appointed counsel in a public defender's office; and
 - Add a requirement that an attorney have experience representing a person with a developmental disability before accepting appointment under section 1471(c) to represent such a person in a limited conservatorship proceeding.

Alternatives Considered

The committee considered not amending rule 7.1101. However, committee members and stakeholders reported inconsistent and sometimes inadequate experience and education of appointed counsel in conservatorship and guardianship proceedings across the state. In addition, a comparison of the existing rule to section 1456 led the committee to conclude that the rule's authorization of experience and education in general probate law and process was not fully consistent with the statute's specific focus on conservatorships and guardianships.

The committee first considered amending rule 7.1101 as a single rule; it circulated proposed amendments for public comment in spring 2018.⁴ In response to the wide range of public comments, the committee elected to divide the existing rule into several rules, the better to distinguish the experience and education needed to represent minor wards and proposed wards from the experience and education needed to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity. The committee also considered not revising forms GC-010 and GC-011, but determined that the forms needed revision to reflect the amendments to rule 7.1101 and to simplify the certification procedures.

The committee also considered proposing several additional rule amendments. First, the committee considered proposing a new, separate rule to apply only to representation in limited conservatorship proceedings, but decided to address limited conservatorships in the context of the existing rule. This approach is consistent with statute. The current statutory framework integrates limited conservatorship proceedings into the general conservatorship provisions of division 4 of the code. Unless otherwise specified, provisions addressing conservatorships apply to both general and limited conservatorships. When the Legislature has chosen to treat limited conservatorship proceedings differently, it has interpolated specific sections or subdivisions into the general statutory scheme. For example, section 1801 of the Probate Code, which describes the persons for whom a court may appoint a conservator, addresses the appointment of a limited conservator for a developmentally disabled adult in subdivision (d). In the same way, section 1471, which specifies the circumstances requiring appointment of counsel in a conservatorship proceeding, provides for mandatory appointment in a limited conservatorship proceeding in subdivision (c).

Second, the committee considered whether to specify the standards of professional conduct applicable to attorneys appointed by the court to represent (proposed) wards and conservatees. The committee determined, however, that it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules of Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the general role and duties of an attorney and to authorize any exceptions in specific circumstances. When the Judicial Council *has* entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j): court-appointed minor’s counsel is to represent “the child’s best interest”.) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance with the statute. Nothing in sections 1456, 1470, or 1471, however, specifies—or invites the council to specify—the role and duties of counsel appointed in guardianship or conservatorship proceedings. The committee has therefore declined to specify those duties in the proposed rules.

⁴ A chart with the full text of all comments received in spring 2018 and the committee’s responses is attached at pages 26–65.

Fiscal and Operational Impacts

The proposed specification of the subjects to be included in qualifying education may lead to a short-term reduction in the number of attorneys eligible to accept appointment. To the extent that this effect occurs, the committee intends the alternative experience requirements to counteract it. The amendments to the experience and education requirements try to balance the need for attorneys to have specific knowledge and experience to provide adequate representation with the need to encourage less experienced attorneys to enter the field. The proposed revisions to the certification forms would allow attorneys and courts to spend less time completing and processing those forms. The committee believes that the proposed reorganization and amendments, taken as a whole, will lead to more effective representation of wards and conservatees, better-informed judicial determinations, and fewer continued hearings.

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?
- Should proposed rules 7.1102(b)(1)(B) and 7.1103(b)(1)(B) specify minimum amounts of professional liability insurance coverage?
- Should proposed rules 7.1102(b)(1)(A) and 7.1103(b)(1)(A) be expanded to authorize appointment of legal-services attorneys registered under rule 9.45?
- Should the exemption for small courts be expanded to include courts with more than four authorized judgeships? If so, what would be the appropriate upper limit?

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 7.1101–7.1105, at pages 7–22
2. Forms GC-010 and GC-011, at pages 23–25
3. Spring 2018 chart of comments, at pages 26–65

4. Link A: Probate Code, § [1456](http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1456),
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB§ionNum=1456
5. Link B: Probate Code, §§ 1470–1474,
http://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=PROB&division=4.&title=&part=1.&chapter=4.&article=

Rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105 of the California Rules of Court would be adopted, and rule 7.1101 would be repealed, effective September 1, 2019, to read:

1 **Chapter 23. ~~Court-Appointed Counsel in Probate Proceedings~~**

2
3
4 **Rule 7.1101. ~~Qualifications and continuing education required of counsel appointed~~**
5 **~~by the court in guardianships and conservatorships~~**

6
7 **(a) ~~Definitions~~**

8
9 ~~As used in this rule, the following terms have the meanings stated below:~~

- 10
11 (1) ~~“Appointed counsel” or “counsel appointed by the court” are legal counsel~~
12 ~~appointed by the court under Probate Code sections 1470 or 1471, including~~
13 ~~counsel in private practice and deputy public defenders directly responsible~~
14 ~~for the performance of legal services under the court’s appointment of a~~
15 ~~county’s public defender.~~
- 16
17 (2) ~~A “probate guardianship” or “probate conservatorship” is a guardianship or~~
18 ~~conservatorship proceeding under division 4 of the Probate Code.~~
- 19
20 (3) ~~“LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare and~~
21 ~~Institutions Code section 5000 et seq.~~
- 22
23 (4) ~~An “LPS conservatorship” is a conservatorship proceeding for a gravely~~
24 ~~disabled person under chapter 3 of the LPS Act, Welfare and Institutions~~
25 ~~Code sections 5350–5371.~~
- 26
27 (5) ~~A “contested matter” in a probate or LPS conservatorship proceeding is a~~
28 ~~matter that requires a noticed hearing and in which written objections are~~
29 ~~filed by any party or made by the conservatee or proposed conservatee orally~~
30 ~~in open court.~~
- 31
32 (6) ~~“Counsel in private practice” includes attorneys employed by or performing~~
33 ~~services under contracts with nonprofit organizations.~~

34
35 **(b) ~~Qualifications of appointed counsel in private practice~~**

36
37 ~~Except as provided in this rule, each counsel in private practice appointed by the~~
38 ~~court on or after January 1, 2008, must be an active member of the State Bar of~~
39 ~~California for at least three years immediately before the date of appointment, with~~
40 ~~no discipline imposed within the 12 months immediately preceding any date of~~
41 ~~availability for appointment after January 1, 2008; and~~
42

1 (1) *Appointments to represent minors in guardianships*

2
3 For an appointment to represent a minor in a guardianship:

4
5 (A) ~~Within the five years immediately before the date of first availability~~
6 ~~for appointment after January 1, 2008, must have represented at least~~
7 ~~three wards or proposed wards in probate guardianships, three children~~
8 ~~in juvenile court dependency or delinquency proceedings, or three~~
9 ~~children in custody proceedings under the Family Code; or~~

10
11 (B) ~~At the time of appointment, must be qualified:~~

12
13 (i) ~~For appointments to represent children in juvenile dependency~~
14 ~~proceedings under rule 5.660 and the court's local rules~~
15 ~~governing court-appointed juvenile court dependency counsel; or~~

16
17 (ii) ~~For appointments to represent children in custody proceedings~~
18 ~~under the Family Code under rule 5.242, including the alternative~~
19 ~~experience requirements of rule 5.242(g).~~

20
21 (C) ~~Except as provided in (f)(2), counsel qualified for appointments in~~
22 ~~guardianships under (B) must satisfy the continuing education~~
23 ~~requirements of this rule in addition to the education or training~~
24 ~~requirements of the rules mentioned in (B).~~

25
26 (2) *Appointments to represent conservatees or proposed conservatees*

27
28 For an appointment to represent a conservatee or a proposed conservatee,
29 within the five years immediately before the date of first availability for
30 appointment after January 1, 2008, counsel in private practice must have:

31
32 (A) ~~Represented at least three conservatees or proposed conservatees in~~
33 ~~either probate or LPS conservatorships; or~~

34
35 (B) ~~Completed any three of the following five tasks:~~

36
37 (i) ~~Represented petitioners for the appointment of a conservator at~~
38 ~~commencement of three probate conservatorship proceedings,~~
39 ~~from initial contact with the petitioner through the hearing and~~
40 ~~issuance of Letters of Conservatorship;~~

41
42 (ii) ~~Represented a petitioner, a conservatee or a proposed~~
43 ~~conservatee, or an interested third party in two contested probate~~

1 or LPS conservatorship matters. A contested matter that qualifies
2 under this item and also qualifies under (i) may be applied toward
3 satisfaction of both items;
4

5 (iii) Represented a party for whom the court could appoint legal
6 counsel in a total of three matters described in Probate Code
7 sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
8

9 (iv) Represented fiduciaries in three separate cases for settlement of a
10 court-filed account and report, through filing, hearing, and
11 settlement, in any combination of probate conservatorships or
12 guardianships, decedent's estates, or trust proceedings under
13 division 9 of the Probate Code; or
14

15 (v) Prepared five wills or trusts, five durable powers of attorney for
16 health care, and five durable powers of attorney for asset
17 management.
18

19 (3) Except as provided in (e)(2), private counsel qualified under (1) or (2) must
20 also be covered by professional liability insurance satisfactory to the court in
21 the amount of at least \$100,000 per claim and \$300,000 per year.
22

23 **(e) Qualifications of deputy public defenders performing legal services on court**
24 **appointments of the public defender**
25

26 (1) Except as provided in this rule, beginning on January 1, 2008, each county
27 deputy public defender with direct responsibility for the performance of legal
28 services in a particular case on the appointment of the county public defender
29 under Probate Code sections 1470 or 1471 must be an active member of the
30 State Bar of California for at least three years immediately before the date of
31 appointment; and either
32

33 (A) Satisfy the experience requirements for private counsel in (b)(1) for
34 appointments in guardianships or (b)(2) for appointments in
35 conservatorships; or
36

37 (B) Have a minimum of three years' experience representing minors in
38 juvenile dependency or delinquency proceedings or patients in
39 postcertification judicial proceedings or conservatorships under the
40 LPS Act.
41

42 (2) A deputy public defender qualified under (1) must also be covered by
43 professional liability insurance satisfactory to the court in the amount of at

1 least \$100,000 per claim and \$300,000 per year, or be covered for
2 professional liability at an equivalent level by a self-insurance program for
3 the professional employees of his or her county.
4

- 5 (3) A deputy public defender who is not qualified under this rule may
6 periodically substitute for a qualified deputy public defender with direct
7 responsibility for the performance of legal services in a particular case. In
8 that event, the county public defender or his or her designee, who may be the
9 qualified supervisor, must certify to the court that the substitute deputy is
10 working under the direct supervision of a deputy public defender who is
11 qualified under this rule.
12

13 **(d) Transitional provisions on qualifications**
14

- 15 (1) Counsel appointed before January 1, 2008, may continue to represent their
16 clients through March 2008, whether or not they are qualified under (b) or
17 (c). After March 2008, through conclusion of these matters, the court may
18 retain or replace appointed counsel who are not qualified under (b) or (c) or
19 may appoint qualified co-counsel to assist them.
20
- 21 (2) In January, February, and March 2008, the court may appoint counsel in new
22 matters who have not filed the certification of qualifications required under
23 (h) at the time of appointment but must replace counsel appointed under this
24 paragraph who have not filed the certificate before April 1, 2008.
25

26 **(e) Exemption for small courts**
27

- 28 (1) Except as provided in (2) and (3), the qualifications required under (b) or (c)
29 may be waived by a court with four or fewer authorized judges if it cannot
30 find qualified counsel or for other grounds of hardship.
31
- 32 (2) A court described in (1) may, without a waiver, appoint counsel in private
33 practice who do not satisfy the insurance requirements of (b)(3) if counsel
34 demonstrate to the court that they are adequately self-insured.
35
- 36 (3) A court may not waive or disregard the self-insurance requirements of (c)(2)
37 applicable to deputy public defenders.
38
- 39 (4) A court waiving the qualifications required under (b) or (c) must make
40 express written findings showing the circumstances supporting the waiver
41 and disclosing all alternatives considered, including appointment of qualified
42 counsel from adjacent counties and other alternatives not selected.
43

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

- 2
- 3 (1) Except as provided in (2), beginning on January 1, 2008, counsel appointed
4 by the court must complete three hours of education each calendar year that
5 qualifies for Minimum Continuing Legal Education credit for State Bar-
6 certified specialists in estate planning, trust, and probate law.
- 7
- 8 (2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and
9 who are appointed to represent minors in guardianships of the person only
10 may satisfy the continuing education requirements of this rule by satisfying
11 the annual education and training required under rule 5.242(d) or the
12 continuing education required under rule 5.660(d)(3).

13

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

15

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

21

22 **(h) Initial certification of qualifications; annual post-qualification reports and**
23 **certifications**

- 24
- 25 (1) Each counsel appointed or eligible for appointment by the court before
26 January 1, 2008, including deputy public defenders, must certify to the court
27 in writing before April 1, 2008, that he or she satisfies the qualifications
28 under (b) or (c) to be eligible for a new appointment on or after that date.
- 29
- 30 (2) After March 2008, each counsel must certify to the court that he or she is
31 qualified under (b) or (c) before becoming eligible for an appointment under
32 this rule.
- 33
- 34 (3) Each counsel appointed or eligible for appointment by the court under this
35 rule must immediately advise the court of the imposition of any State Bar
36 discipline.
- 37
- 38 (4) Beginning in 2009, each appointed counsel must certify to the court before
39 the end of March of each year that:
- 40
- 41 (A) His or her history of State Bar discipline and professional liability
42 insurance coverage or, if appointed by a court with four or fewer
43 authorized judges under (c)(2), the adequacy of his or her self-

1 insurance, either has or has not changed since the date of his or her
2 qualification certification or last annual certification; and

3
4 (B) He or she has completed the continuing education required for the
5 preceding calendar year.

6
7 (5) Annual certifications required under this subdivision showing changes in
8 State Bar disciplinary history, professional liability insurance coverage, or
9 adequacy of self insurance must include descriptions of the changes.

10
11 (6) Certifications required under this subdivision must be submitted to the court
12 but are not to be filed or lodged in a case file.

13
14 **(f) Reporting**

15
16 The Judicial Council may require courts to report appointed counsel's
17 qualifications and completion of continuing education required by this rule to
18 ensure compliance with Probate Code section 1456.

19
20
21 **Rule 7.1101. Scope and Definitions**

22
23 **(a) Scope**

24
25 The rules in this chapter establish minimum experience, education, and certification
26 requirements that an attorney must meet as a condition of accepting court
27 appointment under Probate Code section 1470 or 1471 to represent a ward,
28 proposed ward, conservatee, proposed conservatee, or person alleged to lack legal
29 capacity as counsel of record in a proceeding under division 4 of the Probate Code.
30 The rules in this chapter do not apply to retained counsel.

31
32 **(b) Definitions**

33
34 The following terms are used in this chapter, as defined below:

35
36 (1) “Appointed counsel,” “appointed attorney,” “counsel appointed by the court,”
37 or “attorney appointed by the court” mean an attorney appointed as counsel
38 of record to represent a ward or proposed ward, a conservatee or proposed
39 conservatee, or a person alleged to lack legal capacity in a proceeding under
40 division 4 of the Probate Code.

- 1 (2) “Counsel of record” means an attorney who assumes personal responsibility
2 for the performance of legal services for a client in a judicial proceeding
3 under California law, regardless of whether:
4
5 (A) The attorney is a sole practitioner or works for a private law firm, a
6 legal services organization, or a public agency; or
7
8 (B) The attorney is appointed or retained.
9
10 (3) “Probate guardianship” means any proceeding related to the establishment,
11 supervision, modification, or termination of a general or temporary
12 guardianship under division 4 of the Probate Code.
13
14 (4) “Probate conservatorship” means any proceeding related to the establishment,
15 supervision, modification, or termination of a general or temporary
16 conservatorship under division 4 of the Probate Code.
17
18 (5) “Limited conservatorship” means any proceeding to establish a limited
19 conservatorship—including, as provided in Probate Code section 1431, a
20 proceeding to modify or revoke the powers or duties of a limited
21 conservator—for an adult with a developmental disability under division 4 of
22 the Probate Code.
23
24 (6) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act (Welf. & Inst.
25 Code, § 5000 et seq.), which provides for involuntary mental health treatment
26 and conservatorship for persons who are gravely disabled as the result of a
27 mental disorder.
28
29 (7) “LPS conservatorship” means a conservatorship proceeding for a gravely
30 disabled person under chapter 3 of the LPS Act. (Welf. & Inst. Code,
31 §§ 5350–5372.)
32
33 (8) A “contested matter” is a matter that requires a noticed hearing and in which
34 an objection is filed in writing before or at the hearing or made orally at the
35 hearing by any person entitled to appear at the hearing and support or oppose
36 the petition.
37
38 (9) “Trial” means the determination of one or more disputed issues of fact by
39 means of an evidentiary hearing.
40
41

1 **Rule 7.1102. Minimum qualifications and education of counsel appointed to**
2 **represent wards or proposed wards (§§ 1456, 1470)**

3
4 **(a) Scope**

5
6 This rule establishes minimum qualifications and education requirements that an
7 attorney must meet as a condition of accepting appointment under Probate Code
8 section 1470 as counsel of record for a ward or a proposed ward in a guardianship
9 or other proceeding under division 4 of that code.

10
11 **(b) General requirements**

12
13 (1) To accept appointment under Probate Code section 1470 as counsel of record
14 for a ward or proposed ward, an attorney must:

15
16 (A) Be an active member in good standing of the State Bar of California;

17
18 (B) Have demonstrated to the appointing court that the attorney or the
19 attorney's firm or employer has professional liability insurance with
20 coverage limits no lower than \$100,000 per claim and \$300,000 per
21 year, or is adequately self-insured;

22
23 (C) Have satisfied the experience and education requirements of this rule;
24 and

25
26 (D) Have satisfied any additional experience, education, or procedural
27 requirements—such as procedures for placement on a panel of
28 attorneys eligible for appointment—established by local rule.

29
30 (2) An attorney's failure to meet any requirement in this rule, rule 7.1105, or any
31 applicable local rule constitutes good cause for the court to decline to appoint
32 that attorney, terminate the attorney's existing appointments, and remove the
33 attorney from any panel or list of attorneys approved to accept appointment.

34
35 **(c) Minimum experience requirements**

36
37 Except as provided in (d), an attorney who accepts appointment on or after January
38 1, 2021, as counsel of record for a ward or proposed ward must satisfy the
39 experience requirements in (1), (2), or (3).

40
41 (1) Within the five years immediately before first accepting appointment after
42 January 1, 2021, the attorney must have represented a petitioner or an
43 objector at the beginning of at least three probate guardianship proceedings,

1 including at least one contested matter or trial, from initial contact with the
2 client through the conclusion of the hearing on the petition.

3
4 (2) Within the five years immediately before first accepting appointment after
5 January 1, 2021, the attorney must have represented a minor child in at least
6 three of any one or combination of the following:

7
8 (A) A probate guardianship proceeding in which the child was the ward or
9 proposed ward;

10
11 (B) A juvenile court proceeding in which the child was the subject of a
12 petition to declare the child a dependent of the court; or

13
14 (C) A family law proceeding in which custody or visitation of the child was
15 the subject of a petition or request for order.

16
17 (3) At the time of appointment, the attorney must satisfy the experience
18 requirements:

19
20 (A) In rule 5.660(d) and any applicable local rules for appointment to
21 represent a minor child or nonminor dependent in a child welfare
22 proceeding; or

23
24 (B) In rule 5.242(f) for appointment to represent a minor child in a custody
25 or visitation proceeding under the Family Code.

26
27 **(d) Alternative experience requirements**

28
29 An attorney who does not personally meet the experience requirements in (c) or the
30 initial education requirements in (e) may nevertheless accept appointment under
31 Probate Code section 1470 to represent a ward or proposed ward if the attorney:

32
33 (1) Works for an attorney, a private law firm, a qualifying legal services
34 provider, or a government agency approved by the presiding judge of the
35 superior court or the supervising judge of the probate court, if one has been
36 designated, to accept appointment under Probate Code section 1470 to
37 represent wards or proposed wards; and

38
39 (2) Is supervised by an attorney who has personally satisfied the requirements in
40 (c).

41

1 **(e) Initial education requirements**

2
3 To accept initial appointment under Probate Code section 1470 to represent a ward
4 or proposed ward on or after January 1, 2021, an attorney must have completed, in
5 the preceding 12 months, at least three hours of professional education approved by
6 the State Bar of California for Minimum Continuing Legal Education (MCLE)
7 credit in the subjects listed in (g).
8

9 **(f) Annual education**

10
11 (1) Except as provided in (2), each calendar year an attorney must, as a condition
12 of maintaining any existing appointment or accepting a new appointment the
13 following year, complete at least three hours of professional education
14 approved by the State Bar of California for MCLE credit in one or more of
15 the subjects listed in (g).
16

17 (2) An attorney who satisfies the experience requirements in (c) and the annual
18 education requirements of rule 5.242 or the continuing education
19 requirements of rule 5.660(d)(3) but does not satisfy the requirements in (1)
20 may accept appointment to represent a ward or proposed ward in a
21 guardianship of the person, but not in a guardianship of the estate.
22

23 **(g) Subject matter**

24
25 Education in the following subjects may be used to satisfy this rule's initial and
26 annual education requirements:
27

28 (1) Statutes, rules of court, and case law applying to guardianships and child
29 custody and visitation proceedings;
30

31 (2) The rights of children and parents under state and federal law, including the
32 Indian Child Welfare Act (25 U.S.C. §§ 1901–1963);
33

34 (3) The stages of child development;
35

36 (4) Techniques for communicating with a child at various stages of development,
37 ascertaining the child's views, and presenting those views to the court;
38

39 (5) Requirements of estate management, including proper recordkeeping and
40 accounting practices; and
41

42 (6) Special considerations for representing a child, including:
43

1 (A) Recognizing and understanding the effects of child abuse and neglect,
2 family violence, developmental disabilities, and mental health disorders
3 in minor children; and

4
5 (B) Effectively identifying and collaborating with professionals in other
6 disciplines.

7
8 **(h) Education methods**

9
10 To meet the requirements in (e), (f), and (g), an attorney may use education
11 provided in person or by video, webinar, audio, or another method of distance
12 learning to satisfy the requirements of this rule.

13
14
15 **Rule 7.1103. Minimum qualifications and education of counsel appointed to**
16 **represent conservatees, proposed conservatees, and persons alleged to lack**
17 **legal capacity (§§ 1456, 1470–1471)**

18
19 **(a) Scope**

20
21 This rule establishes minimum qualifications and education requirements that an
22 attorney must meet as a condition of accepting appointment under Probate Code
23 section 1470 or 1471 as counsel of record for a conservatee, a proposed
24 conservatee, or a person alleged to lack legal capacity in a conservatorship, limited
25 conservatorship, or other proceeding under division 4 of that code.

26
27 **(b) General requirements**

28
29 (1) To accept appointment under Probate Code section 1470 or 1471 as counsel
30 of record for a conservatee, proposed conservatee, or person alleged to lack
31 legal capacity, an attorney must:

32
33 (A) Be an active member in good standing of the State Bar of California;

34
35 (B) Have demonstrated to the appointing court that the attorney or the
36 attorney’s firm or employer has professional liability insurance with
37 coverage limits no lower than \$100,000 per claim and \$300,000 per
38 year, or is adequately self-insured;

39
40 (C) Have satisfied the experience and education requirements of this rule;
41 and

1 (D) Have satisfied any additional experience, education, or procedural
2 requirements—such as procedures for placement on a panel of
3 attorneys eligible for appointment—established by local rule.
4

5 (2) An attorney’s failure to meet any requirement in this rule, rule 7.1105, or any
6 applicable local rule constitutes good cause for the court to decline to appoint
7 that attorney, terminate the attorney’s existing appointments, and remove the
8 attorney from any panel or list of attorneys approved to accept appointment.
9

10 **(c) Minimum experience requirements**

11
12 Except as provided in (d), an attorney who accepts appointment on or after January
13 1, 2021, as counsel of record for a conservatee, proposed conservatee, or person
14 alleged to lack legal capacity must satisfy the experience requirements in (1) or (2).
15

16 (1) Within the five years immediately before first accepting appointment after
17 January 1, 2021, the attorney must have represented at least three proposed
18 conservatees in at least three separate proceedings for appointment of a
19 conservator under the Probate Code or the LPS Act, including at least one
20 contested matter or trial; or
21

22 (2) Within the five years immediately before first accepting appointment after
23 January 1, 2021, the attorney must have completed both (A) and (B), as
24 follows:
25

26 (A) Represented a petitioner or an objector to the petition at the beginning
27 of at least two probate conservatorship proceedings, including at least
28 one contested matter or trial, from initial contact with the client through
29 the conclusion of the hearing on the petition.
30

31 (B) Represented a conservatee, proposed conservatee, or person alleged to
32 lack legal capacity in at least two separate matters, including at least
33 one contested matter or trial, under division 4 of the Probate Code or
34 under the LPS Act.
35

36 (3) To accept appointment as counsel of record for a limited conservatee or a
37 proposed limited conservatee, an attorney must have satisfied the
38 requirements in (1) or (2) in part by representing at least one adult with a
39 developmental disability in a proceeding under division 4 of the Probate
40 Code.
41

1 **(d) Alternative experience requirements**

2
3 An attorney who does not meet the experience requirements in (c) or the initial
4 education requirements in (e) may nevertheless accept appointment under Probate
5 Code section 1470 or 1471 if the attorney:
6

- 7 (1) Works for an attorney, a private law firm, a qualifying legal services provider
8 (including the organization designated by the Governor as the state protection
9 and advocacy agency, as defined in section 4900(i) of the Welfare and
10 Institutions Code), or a government agency approved by the presiding judge
11 of the superior court or the supervising judge of the probate court, if one has
12 been designated, to accept appointment to represent conservatees, proposed
13 conservatees, and persons alleged to lack legal capacity; and
14
15 (2) Is supervised by an attorney who has personally satisfied the requirements in
16 (c).
17

18 **(e) Initial education requirements**

19
20 To accept initial appointment under Probate Code section 1470 or 1471 to represent
21 a conservatee, proposed conservatee, or person alleged to lack legal capacity on or
22 after January 1, 2021, an attorney must have completed, in the preceding 12
23 months, at least three hours of professional education approved by the State Bar of
24 California for Minimum Continuing Legal Education credit in the subjects listed in
25 (g).
26

27 **(f) Annual education requirements**

28
29 Each calendar year, an attorney must, as a condition of maintaining an existing
30 appointment or accepting a new appointment the following year, complete at least
31 three hours of professional education approved by the State Bar of California for
32 MCLE credit in one or more of the subjects listed in (g).
33

34 **(g) Subject matter**

35
36 Education in the following subjects, provided in accordance with (i) and approved
37 by the appointing court, may be used to satisfy this rule's initial and annual
38 education requirements:
39

- 40 (1) Statutes, rules of court, and case law applying to general and limited
41 conservatorship proceedings;
42

1 (2) The rights of conservatees, persons alleged to lack legal capacity, and persons
2 with disabilities under state and federal law, including the Americans with
3 Disabilities Act (42 U.S.C. §§ 12101–12213);
4

5 (3) A lawyer’s ethical duties to a client, including a client who has or may have
6 diminished functional ability, under the California Rules of Professional
7 Conduct and other applicable law;
8

9 (4) Techniques for communicating with an older client or a client with a
10 disability, ascertaining the client’s wishes, and advocating for those wishes in
11 court;
12

13 (5) Requirements of estate management, including proper recordkeeping and
14 accounting practices; and
15

16 (6) Special considerations for representing an older adult or a person with a
17 disability, including the following:
18

19 (A) Risk factors that make a person vulnerable to undue influence, physical
20 and financial abuse, and neglect;
21

22 (B) Effects of physical, intellectual, and developmental disabilities; mental
23 health disorders; major neurocognitive disorders (including dementia);
24 and substance use disorders on a person’s ability to perform activities
25 of daily living;
26

27 (C) Identification of and collaboration with professionals from other
28 disciplines, including staff of the local regional center for the
29 developmentally disabled, if applicable; and
30

31 (D) Identification of less-restrictive alternatives to conservatorship,
32 including supported decisionmaking, and of available local options for
33 less-restrictive supports, behavioral intervention, outpatient treatment,
34 or, if necessary, residential placement.
35

36 **(h) Education methods**
37

38 To meet the requirements in (e), (f), and (g), an attorney may use education
39 provided in person or by video, webinar, audio, or another method of distance
40 learning to satisfy the requirements of this rule.
41
42
43

1 **Rule 7.1104. Exemption for small courts**

2
3 **(a) Waiver**

4
5 A court with four or fewer authorized judges may waive any of the requirements in
6 rule 7.1102(c)–(g) or 7.1103(c)–(g) if it cannot find qualified counsel or because of
7 other hardship.

8
9 **(b) Written findings**

10
11 A court that waives any of the requirements in rule 7.1102(c)–(g) or 7.1103(c)–(g)
12 must make express written findings describing the hardship supporting the waiver
13 and all alternatives—such as appointment of qualified counsel from an adjacent
14 county—that were considered and not selected.

15
16 **(c) Standing Order**

17
18 The court may execute a general waiver under this rule as a standing order. A court
19 that chooses to use a general waiver must execute a new waiver each calendar year.
20
21

22 **Rule 7.1105. Attorney certification**

23
24 **(a) Initial certification**

25
26 Before accepting an appointment under Probate Code section 1470 or 1471 after
27 January 1, 2021, an attorney must certify on form GC-010 that the attorney meets
28 the requirements in rule 7.1102(b) or 7.1103(b) and, unless appointed under rule
29 7.1104, all applicable requirements in rule 7.1102(c)–(e), rule 7.1103(c)–(e), or
30 both.

31
32 **(b) Annual certification**

33
34 To maintain existing appointments and to accept new appointments under Probate
35 Code section 1470 or 1471, an attorney who has submitted an initial certification
36 must certify on form GC-011 no later than March 31 of each subsequent year that,
37 since the attorney’s last submitted certification:

- 38
39 (1) The State Bar has taken no disciplinary action against the attorney;
40
41 (2) The terms and coverage limits of the attorney’s professional liability
42 insurance or the level of self-insurance has not decreased; and
43

1 (3) The attorney has completed the annual education required for the preceding
2 calendar year.

3
4 **(c) Notification of disciplinary action or change in coverage**

5
6 (1) An attorney who has submitted a certification under (a) or (b) must notify the
7 court within five court days of any disciplinary action taken against the
8 attorney by the State Bar of California since the attorney's last submitted
9 certification. The notification must describe the charges, disposition, and
10 terms of any reproof, probation, or suspension.

11
12 (2) If, since an attorney's last submitted certification, the attorney has been
13 subject to State Bar disciplinary action, or the terms and coverage limits of
14 the attorney's professional liability insurance or self-insurance have
15 decreased and the attorney has not otherwise notified the court, the attorney's
16 annual certification under (b) must include a description of each action or
17 change.

18
19 **(d) Documentation**

20
21 A court to which an attorney has submitted a certification under this rule may
22 require the attorney to submit documentation to support any statement in the
23 certification.

24
25 **(e) Confidentiality**

26
27 The certifications required by this rule and any supporting documentation must be
28 submitted to and maintained confidentially by the court. They must not be filed or
29 lodged in a case file.

<p>ATTORNEY STATE BAR NUMBER:</p> <p>NAME:</p> <p>FIRM NAME:</p> <p>STREET ADDRESS:</p> <p>CITY: STATE: ZIP CODE:</p> <p>TELEPHONE NO.: FAX NO.:</p> <p>E-MAIL ADDRESS:</p>	<p><i>DO NOT FILE OR LODGE IN CASE FILE</i></p> <p>DRAFT</p> <p>NOT APPROVED BY</p> <p>JUDICIAL COUNCIL</p>
<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF</p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p> <p>BRANCH NAME:</p>	
<p>INITIAL CERTIFICATION OF QUALIFICATION FOR APPOINTMENT</p> <p>IN <input type="checkbox"/> GUARDIANSHIP <input type="checkbox"/> CONSERVATORSHIP</p>	
<p>NOTICE TO ATTORNEY</p> <p>1. Before you may accept appointment as counsel of record in a guardianship, conservatorship, or other proceeding under division 4 of the Probate Code, you must certify to the court on this form that you meet the applicable requirements in rule 7.1102 or 7.1103 of the California Rules of Court.</p> <p>2. Under the circumstances specified in rule 7.1104, a court with four or fewer authorized judges may waive the education and experience requirements in rules 7.1102 and 7.1103.</p>	

I certify that *(check all boxes that apply)*

1. I am a member in good standing of the State Bar of California. *(Date of admission):*
2. a. I am covered by professional liability insurance up to the amount of \$ _____ per claim and \$ _____ per year.
My insurer is *(specify)*:
or
b. I am self-insured or covered by a self-insurance program through my firm, employer, or government agency.
3. I am qualified to accept appointment under Probate Code section 1470 to represent a ward or proposed ward in a guardianship or other proceeding under division 4 of the Probate Code, in that
 - a. I have satisfied the experience and initial education requirements in rule 7.1102(c) and (e).
or
 I have satisfied the alternative experience requirements in rule 7.1102(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
4. I am qualified to accept appointment under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity in a proceeding under division 4 of the Probate Code, in that
 - a. I have satisfied the experience and initial education requirements in rule 7.1103(c) and (e).
or
 I have satisfied the alternative experience requirements in rule 7.1103(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
5. I am qualified to accept appointment under Probate Code section 1471(c) to represent a limited conservatee or proposed limited conservatee in a proceeding to establish a limited conservatorship as defined in Probate Code section 1431, in that
 - a. in the course of satisfying the requirements in 4, I have satisfied the specific experience requirement in rule 7.1103(c)(3).
or
 I have satisfied the alternative experience requirements in rule 7.1103(d).
 - b. I have satisfied all additional requirements imposed by local rule of court.
6. I have satisfied the general requirements in 1 and 2, but I have not satisfied the requirements in 3, 4, or 5. My qualifications are described in 7. I ask the court, which has four or fewer authorized judges, to waive the unsatisfied requirements as authorized by rule 7.1104 and consider me for appointment under Probate Code section 1470 or 1471.

Additional space provided and signature required on page 2.

INITIAL CERTIFICATION OF <i>(name)</i> :	CASE NUMBER:
, ATTORNEY	

7. Additional information is provided in Attachment 7 below:

I certify under penalty of perjury under the laws of the State of California that the foregoing statements, including statements in all attachments or other documents submitted with this form, are true and correct.

Date:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)



(SIGNATURE)

ATTORNEY STATE BAR NUMBER: NAME: FIRM NAME: STREET ADDRESS: CITY: STATE: ZIP CODE: TELEPHONE NO.: FAX NO.: E-MAIL ADDRESS:	<p style="text-align: center;"><i>DO NOT FILE OR LODGE IN CASE FILE</i></p> <p style="text-align: center;">DRAFT NOT APPROVED BY JUDICIAL COUNCIL</p>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
ANNUAL CERTIFICATION OF QUALIFICATION FOR APPOINTMENT	

NOTICE TO COURT-APPOINTED ATTORNEYS IN CONSERVATORSHIPS OR GUARDIANSHIPS

- Each calendar year, beginning in 2020, you must complete three hours of education approved by the State Bar for Minimum Continuing Legal Education (MCLE) credit in one or more of the subjects listed in California Rules of Court, rule 7.1102(g), for appointment to represent wards or proposed wards in guardianships, or one or more of the subjects listed in rule 7.1103(g), for appointment to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity.
- No later than March 31 of each calendar year, beginning in 2021, you must certify to the court on this form that (1) the State Bar has taken no disciplinary action against you, (2) your professional liability insurance coverage or level of self-insurance has not decreased since you filed your most recent previous certification, and (3) you completed the required annual education during the previous calendar year. If you cannot certify (1) or (2), you must describe any disciplinary action or decreases in your insurance coverage or level of self-insurance in attachments to this form. (See rule 7.1105(c).)

I certify that *(check all boxes that apply)*

- the State Bar has taken no disciplinary action against me since I filed my last certification of qualification.
 - the State Bar has taken disciplinary action against me since I filed my last certification of qualification. The charges, disposition, and terms of discipline are described in Attachment 1.
- my professional liability insurance coverage or level of self-insurance has not decreased since I filed my last certification of qualification.
 - my professional liability insurance coverage or level of self-insurance has decreased since I filed my last certification of qualification. My current insurance coverage or level of self-insurance is described in Attachment 2.
- During calendar year _____, I completed a total of *(specify)*: _____ hours of continuing education approved for MCLE credit by the State Bar in subjects listed in rule 7.1102(g) (wards) rule 7.1103(g) (conservatees).
- During calendar year _____, I continued to meet all other requirements imposed by local rule of court as a condition of accepting appointment.

I certify under penalty of perjury under the laws of the State of California that the foregoing statements, including statements in any attachment, are true and correct.

Date:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)



(SIGNATURE)

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
1.	California Advocates for Nursing Home Reform (CANHR) by Anthony Chicotel, Staff Attorney San Francisco	AM	<p><u>The rule should promote zealous advocacy by court-appointed attorneys where it can.</u></p> <p>CANHR certainly understands the desire to ensure the competence of attorneys who a court-appointed to represent conservatees. However, if the goal of the Rule is to improve conservatorship defense, the Judicial Council would best be served by promoting zealous advocacy from the attorneys who represent conservatees. In CANHR’s experience, attorneys who represent conservatees often serve their own notion of the conservatee’s best interests, foregoing their client’s wishes and fulfilling a role akin to a guardian ad litem’s. While the committee unfortunately decided not to propose standards of representation for court-appointed counsel, zealous advocacy could still be a component of the education and experience requirements at the heart of the Rule. We believe this could be done in two ways:</p> <ul style="list-style-type: none"> • Add zealous advocacy to the subject matters listed in the Rule’s subsection (g) that may be used to satisfy the MCLE 	<p>The committee appreciates CANHR’s comment and agrees that clear specification of the role and duties of counsel retained or appointed to represent a (proposed) ward or conservatee is desirable. The committee does not, however, recommend that the rules provide that specification directly. Generally speaking, it is the province of the Legislature (see, e.g., Bus. & Prof. Code, § 6068) and the Supreme Court (see, e.g., Rules Prof. Conduct, rules 1.2–1.4 (eff. Nov. 1, 2018)) to specify the role and duties of an attorney and to authorize any exceptions. When the Judicial Council <i>has</i> entered this arena, it has done so at the express direction of the Legislature and, doing so, has echoed the standard specified by the relevant statute. (See, e.g., Fam. Code, §§ 3150–3151; Cal. Rules of Court, rule 5.242(j) (court-appointed minor’s counsel is to represent “the child’s best interests”).) Here, Probate Code section 1456 directs the council to adopt a rule that specifies the qualifications and the amount and subject matter of education related to guardianships and conservatorships required for appointed counsel, as well as reporting requirements to ensure compliance by appointed counsel. Nothing in sections 1456, 1470, and 1471, however, specifies, or invites the council to specify, the role and duties of counsel in guardianship or conservatorship proceedings.</p> <p>The committee agrees with the spirit of the suggested change. The committee believes that the role and duties of an attorney toward a client</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>requirements specified in subsection (f);</p> <ul style="list-style-type: none"> • Add the representation of a conservatee in a conservatorship trial to the list of experience requirements in subsections (d) or (e). Representing a conservatee in a conservatorship trial is a good proxy for zealous advocacy and something that should be encouraged in state policy. <p><u>Add other important subjects to the options for required education.</u> In our experience, conservatees are often unnecessarily moved from their homes, drugged, and institutionalized. We would therefore like to see the subject matter listed in subsection (g) expanded to include 1) the long-term care continuum with an emphasis on less restrictive and community based options, and 2) non-pharmacological behavioral interventions.</p> <p><u>Clarify that the education and experience requirements do not apply to retained counsel.</u> The Rule applies to court-appointed counsel. Unfortunately, courts sometimes require</p>	<p>are best covered in the general legal ethics training required of all attorneys. Nevertheless, the committee has modified its recommendation to add “a lawyer’s ethical duties to a client, including a client who lacks or may lack decision-making capacity,” to the list of subjects that may be used to satisfy the rule’s education requirements.</p> <p>The committee agrees that experience representing a conservatee or proposed conservatee in at least one contested matter or trial is important and has clarified that requirement in rule 7.1103(c).</p> <p>The committee agrees that instruction in less-restrictive options to conservatorship, including supported decision making, and in local options for less-restrictive residential placement, treatment, and medication, is important and has added these to the list of subjects that may be used to satisfy the rule’s education requirements.</p> <p>The committee agrees that the rule, as authorized by section 1456, applies only to counsel</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>attorneys who are retained by conservatees to complete Judicial Council form GC-010 in order to represent them. In such a case, the conservatee may be denied the right to choose their own counsel. We therefore recommend that subsection (b) include an express statement that the qualification, education, and certification requirements do not apply to attorneys who are retained or chosen by a conservatee or proposed conservatee.</p> <p><u>Provide an experience exemption for attorneys with a demonstrated proficiency in conservatorship cases.</u></p> <p>Under the current and proposed rules, I would not qualify for court appointment to represent a proposed conservatee. I have represented approximately 25 conservatees, including two trials (though none in the last three years), authored the CANHR conservatorship defense guide, review and comment on proposed legislation regarding conservatorships (including sponsorship of SB 938 (Jackson, 2016)), and routinely handle calls from people all around the state with conservatorship questions.</p> <p>The experience requirement looks as though it was written by probate attorneys for probate</p>	<p>appointed by the court under section 1470 or 1471. The committee has modified its recommendation to so indicate.</p> <p>The committee agrees that the experience requirements as circulated were too stringent and has revised them consistent with this and other recommendations. Although the committee believes that the temporal proximity of an attorney’s experience to the attorney’s appointment is critical, it recognizes that three years may be too short a time for an attorney to acquire the necessary experience. The committee has modified its recommended requirements to increase their flexibility by returning the time frame in which qualifying experience may be acquired to <i>five</i> years, tailoring the subject matter more narrowly to conservatorship proceedings, and requiring experience in only one contested proceeding or trial.</p> <p>The committee has revised the proposed alternative experience requirements in rules</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>attorneys, creating a possible Catch-22. The only way one can get the experience “necessary” to represent conservatees is either to represent conservatees without the benefit of court appointment, represent conservators, or take other kinds of probate cases. Attorneys who are just interested in representing conservatees may find it impossible to do so.</p> <p>We therefore recommend the rule include some process by which attorneys can petition the court for an exemption from the experience requirement if they can demonstrate proficiency in conservatorship defense attained through other work.</p>	<p>7.1102(d) and rule 7.1103(d) to authorize an attorney who has not personally met the experience requirements to accept appointments if supervised by an attorney who has met the experience requirements.</p> <p>The committee does not recommend authorizing an exemption based on “demonstration of proficiency” without more specificity. The legislative purpose underlying the requirement for a statewide rule seems to have been to establish minimum statewide standards. Allowing a court to appoint an attorney who demonstrates proficiency without meeting the standards would eviscerate the rule and thereby defeat the statutory purpose. The committee intends the alternative experience requirements in rule 7.1102(d) or 7.1103(d) to allow an attorney who does not yet meet the experience requirements in rule 7.1102(c) or 7.1103(c), respectively, to accept appointment under the supervision of an attorney who does.</p>
2.	Disability Rights California Legal Advocacy Unit by Melinda Bird, Sr. Litigation Counsel Los Angeles	AM	<p>1. Experience Requirement in Amended Rule 7.1101(e) We support the alternative experience requirements in proposed Rule 7.1101(e), but recommend an additional provision to address the unique role of the state protection and advocacy agency.</p>	<p>The committee appreciates DRC’s comment. Please see below for responses to specific concerns.</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>Welfare and Institutions Code § 4901(a) establishes a state protection and advocacy agency with particular responsibilities regarding persons with disabilities. In 1978, the Governor’s office designated Disability Rights California as California’s protection and advocacy agency pursuant to Section 4901. Disability Rights California is the recipient of a special grant from the federal government to represent individuals with intellectual and developmental disabilities. Disability Rights California is also the recipient of a contract from the California Department of Developmental Services to our Office of Client’s Rights Advocacy to represent consumers served by the State’s 21 regional centers. For these reasons, attorneys with Disability Rights California have special expertise in representing people with intellectual and developmental disabilities, and would be well-suited for court appointments in conservatorship proceedings.</p> <p>However, as a state-wide organization, DRC generally and the Office of Client’s Rights Advocacy in particular may be unable to meet the direct supervision requirements in proposed Rule 7.1101(e)(2). Consequently, we request that the Judicial Council consider the following underlined text as an additional amendment to proposed Rule 7.1101(e):</p>	<p>The committee agrees with the suggestion and has added a specific reference to the state protection and advocacy agency in the rule.</p> <p>The committee agrees that the requirement of supervision by an attorney in the same organization is unduly restrictive and has removed that requirement from its recommendation. The revised recommendation allows an attorney to satisfy the alternative experience requirements if supervised by an attorney who meets the primary experience requirements. The committee also notes that the rule does not require an attorney who</p>

Positions: A = Agree; AM = Agree if modified; N = Do not agree.

SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>(e) Alternative experience requirements</p> <p>An attorney who does not meet the experience requirements in (d) may be appointed under Probate Code section 1470 or 1471 if the attorney has completed the education required in (d) and:</p> <p>(1) Works for a private law firm, a legal services organization (<u>including the state protection and advocacy organization</u>), or a public defender’s office that has been approved by the presiding judge of the local superior court or the supervising judge of the local probate court to accept appointments under Probate code section 1470 or 1471; and</p> <p>(2) Is directly supervised by an attorney working in the same firm, organization, or office who satisfies the applicable experience requirements in (d), <u>or is employed by the state protection and advocacy agency.</u></p> <p>2. Education Requirement in Amended Rule 7.1101(g) Proposed Rule 7.1101(g) sets out more tailored and specific education requirements for court-appointed counsel. We strongly support these new requirements.</p> <p>3. Modify GC-255 Form To Permit Termination of a Conservatorship or Create</p>	<p>independently meets the primary experience requirements in rule 7.1103(c) to be supervised.</p> <p>The subject matter of education that may be applied to meet the rules’ requirements is now specified in rules 7.1102(g) and 7.1103(g). No further response is required.</p>

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Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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			<p>a New Form. The Judicial Council proposes to modify Forms GC-010 and GC-011. We support the proposed changes, subject to our comments above.</p> <p>In addition, we request that the Judicial Council modify Form GC-255, which is the form to terminate a guardianship, by adding language to permit termination of a conservatorship. Alternatively, the Judicial Council could create a new form to do so.</p> <p>There is no form for adults who seek to terminate their own conservatorship. Adults with intellectual and developmental disabilities must use Form GC-255 when they petition to terminate their conservatorship, although the form is clearly not written for an adult to use. We ask the Judicial Council to address this need by modifying the existing form, or by creating a new form for termination of conservatorship.</p>	<p>No further response is required.</p> <p>The committee recognizes the lack of a statewide form to petition for termination of a conservatorship. The development of that form is, however, beyond the scope of this proposal.</p>
3.	Orange County Bar Association by Nikki P. Miliband, President Santa Ana	A	No specific comment.	The committee appreciates the bar association’s comment. No further response is required.
4.	Spectrum Institute Palm Springs by Thomas F. Coleman Disability and Guardianship Project by Nora J. Baladerian, PhD Disability and Abuse Project	AM	<p>We offer the following comments to the proposed change in Rule 7.1101.</p> <p>The topics required to be included in mandatory training are generally good. However, we suggest that two additional matters be added:</p> <p>(a) alternatives to guardianship, including</p>	<p>The committee appreciates Spectrum Institute’s comments.</p> <p>The committee recognizes that an informed</p>

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			<p>supported decision-making, and supports and services available to make such alternatives feasible; and</p> <p>(b) disability and sexuality, especially as those issues pertain to the topics of rights, abuse, and capacity.</p> <p>There is a growing interest, indeed a movement, in California and throughout the nation to require serious exploration of alternatives to guardianship and conservatorship in the pre-planning and judicial review process. Well educated court-appointed attorneys are an integral part of that process. They should receive training on that subject matter.</p> <p>The issue of sexuality of seniors and people with developmental disabilities is delicate and is often avoided altogether or handled in the most superficial manner in conservatorship proceedings. Therefore, it is important to have this topic specifically mentioned in training requirements. Assuming that the matter will be covered in other general categories runs contrary to human nature. The natural reaction of most people is to avoid the topic of disability and sexuality.</p>	<p>determination of whether a conservatorship is the least restrictive alternative necessary to protect the proposed conservatee requires awareness and consideration of alternatives. To present and advocate for a suitable alternative, the attorney appointed to represent the proposed conservatee must learn about that alternative and its availability in the local community.</p> <p>The committee understands that these issues arise more frequently in the context of limited conservatorships. In those cases, Probate Code section 2351.5(b)(6) reserves a limited conservatee’s right to control social and sexual contacts and relationships in the absence of an express order to the contrary. In the context of general conservatorships, section 2351(a) protects a conservatee’s right to receive visitors, phone calls, and personal mail subject to restriction or enforcement by court order. The committee anticipates that training on the rights of conservatees under rule 7.1103(g)(2) will address these issues.</p>

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			<p>Finally, we apologize that op-ed in the Daily Journal contains an error. A closer reading of the proposal has clarified that local courts may impose greater training requirements. A communication will be sent to the publication today asking the editor to publish a follow-up notice of correction.</p> <p>*Excerpts from Thomas F. Coleman, “Proposed Rule Aims to Improve Legal Advocacy in Conservatorship Proceedings,” <i>Daily Journal</i> (Apr. 13, 2018):</p> <p>This rule change would not ensure access to justice for people with disabilities in conservatorship proceedings. But the proposal is a step in the right direction.</p> <p>One good aspect is that the revision to Rule 7.1101 of the California Rules of Court would apply to attorneys appointed in general and limited conservatorships. This could have a beneficial effect on seniors as well as adults with developmental disabilities. Thus, more people could potentially benefit.</p> <p>Another positive aspect is the training requirements included in the committee’s proposal. Among the most important training requirements are subject matters that are crucial to effective advocacy and defense practices for people who have serious cognitive and</p>	<p>No further response is required.</p> <p>The committee appreciates the additional comments submitted as a copy of an editorial in the <i>Daily Journal</i>.</p> <p>No further response is required.</p> <p>No further response is required.</p>

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			<p>communication disabilities.</p> <p>According to the committee’s proposal, subjects that must be covered in mandatory continuing education courses include the rights of persons with disabilities under state and federal law, like the Americans with Disabilities Act. Training on strategies for communicating with a client who has cognitive disabilities, ascertaining the client’s wishes, and presenting those wishes to the court is also required.</p> <p>The recognition, evaluation, and understanding of abuse of people with disabilities is a must. Training is required on the effects of physical, intellectual, and developmental disabilities on a person’s capacity to function and make decisions. How to identify and effectively collaborate with experts from other disciplines is also part of the mandatory training.</p> <p>So far so good. But some significant problems remain.</p> <p>* * *</p> <p>One major omission in subject matter is the failure to require training on less restrictive alternatives to conservatorship, including the identification of community resources that would make such alternatives feasible. There is a growing movement for supported decision-making as an alternative to guardianship and</p>	<p>The committee has included training in less restrictive alternatives to conservatorship, including identification of local options, in the subject matter listed in rule 7.1103(g).</p>

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			<p>conservatorship in California and throughout the nation. It is essential to have attorneys who are trained on such alternatives and that they insist that court investigators, petitioners, and judges consider them. This subject matter should be added to the committee’s proposal.</p> <p>Even if the committee were to make these suggested changes, there is much more work to do to ensure access to justice for seniors and people with disabilities in conservatorship proceedings.</p> <p>Attorneys could sit through such trainings but not implement the principles in actual practice. Without detailed requirements for training contents, without performance standards, without adequate funding for legal services, and without effective monitoring mechanisms, the training components in the committee’s proposal are only theoretically beneficial to these vulnerable clients.</p> <p>The State Bar of California needs to put flesh on the bones of this educational framework. Specific content needs to be required by the State Bar before authorizing CLE credits for any training program. There should not be a blanket authorization to local bar associations allowing them to include whatever they want in such trainings. That is what has been happening now and some of the training programs are sorely lacking.</p>	<p>The remaining comments raise important concerns, but are beyond the scope of this proposal.</p>

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			<p>There should be performance standards to which the trainings relate. Attorneys need to know in no uncertain terms exactly what is expected of them in each of the areas of training. These should not be seminars on “best practices” which can be ignored. It may take legislation to specify performance standards, or the county governments that pay the attorneys can attach performance standards to the money flow. However it occurs, performance standards are a must.</p> <p>Speaking of funding for legal services, it must be adequate enough to enable court-appointed attorneys to perform the legal services they are told they should deliver to these clients. It would be unfair for a court to authorize 10 hours of services in a case when, in fact, it would take 20 hours to do all of the things mentioned in the training program or detailed in the performance standards.</p> <p>Most of these clients cannot complain to the court or to the State Bar about ineffective assistance of counsel, conflicts of interest, or violations of ethical standards such as confidentiality and loyalty. The nature of their disabilities precludes them from understanding such things, much less filing formal complaints about deficiencies in legal services.</p> <p>In order to make the complaint process</p>	

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			<p>accessible to clients with such disabilities, there should be random audits of a sample of attorneys in each county. As the funding source for the legal services—and as the public entity responsible for ensuring ADA-compliant legal services—the county could contract with the State Bar to conduct such audits.</p> <p>Indeed, there is much more work to do in order for seniors and people with disabilities to have meaningful access to effective advocacy and defense services in conservatorship proceedings. The committee’s proposal is an honorable first step.</p> <p>The next step is for the Probate and Mental Health Advisory Committee to adopt the modifications suggested here. But most importantly, once these changes go into effect on Jan. 1, 2019, advocates for conservatorship reform need to work closely with the State Bar, the Legislature, and boards of supervisors in all of the counties to implement the additional reforms upon which true access to justice depends.</p>	<p>In response to this and other comments, the committee has revised its proposal and requested to circulate it for additional public comment in winter 2019.</p>
5.	Superior Court of Los Angeles County (no name provided)	AM	<p>We strongly support the clarification that appointed counsel is the attorney himself or herself and not the entire firm. Los Angeles Superior Court (LASC) has a local rule making this specification but it will be more appropriate and clearer to all Bar members that appointment is individual. Other than the concerns set forth below, LASC supports the proposed changes.</p>	<p>The committee appreciates the court’s comment. No further response is required to this specific comment. Please see below for responses to the court’s concerns.</p>

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			<p>The current rule, CRC 7.1101(g), allows for courts to establish higher qualification or continuing education requirements and allowed the court to impose other requirements, including an application by private counsel.</p> <p>Although the proposed rule relocates its authorization of additional local requirements for higher qualification and education requirements to subdivisions (d) and (g) of the proposed rules, the provision allowing for the court to impose other requirements, including an application by private counsel, has been deleted from the proposed subdivisions. The Los Angeles Superior Court (LASC) panel of court-appointed private counsel attorneys is approximately 200 attorneys each year. For the orderly review of the appropriate documentation submitted, based on the current rule, LASC relied specifically on the ability to have an application for the panel to be submitted along with the required documentation. By deleting that portion of the rule as to an application, it is unclear as to whether the court can impose the requirement of a separate application along with the mandatory Judicial Council forms, GC-010, the Initial Certificate of Qualification for Appointment as Counsel of Record along with mandatory GC-011, the Annual Certificate of Court Appointed Counsel. In addition, as a part of the application, LASC has in its application,</p>	<p>The committee did not intend the amendments to preclude a court from adopting local rules imposing additional eligibility requirements, consistent with the rules, on attorneys seeking appointment under section 1470 or 1471. A local rule requiring an attorney to submit an application for placement on the panel of attorneys eligible for appointment would be consistent with the purpose of this rule. The committee has added language to proposed rules 7.1102(b)(4) and 7.1103(b)(4) to make that clear.</p>

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			<p>provisions relating to the issues of attorney compensation, attorney conflicts and discretionary appointments of counsel which terms are all agreed to by the applicant.</p> <p>Thus, the proposals in both subdivisions (d) and (g) should read:</p> <p>(d)(4) A court may develop local rules that impose additional experience requirements for counsel appointed under section 1470 or 1471, including an application by private counsel.</p> <p>(g)(4) A court may develop local rules imposing additional education requirements for attorneys to qualify for appointment under section 1470 or 1471, including an application by private counsel.</p> <p>Although the court understands the proposal relates to establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code, as it relates to subdivision i, which is the initial and annual attorney certification, future rules would need to be adopted to ensure that not only has the attorney met both the requirements for education and attorney experience, but that rules also be written to address issues of failure to meet the requirements of annual certification or meeting a performance standard in the role as</p>	<p>The committee intends that failure to satisfy any of the applicable requirements of the rules would make an attorney ineligible for further appointment and would constitute good cause for the court to relieve that attorney from any existing appointments. Rule 7.1105 requires attorneys to certify their initial and ongoing compliance with the applicable requirements in these rules. Forms GC-010 and GC-011 provide mechanisms for certification. The committee has added express statements, in rules 7.1102(b)(2) and 7.1103(b)(2), to clarify that an attorney’s failure to meet any requirement in those rules, rule 7.1105, or any applicable local rule constitutes</p>

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			<p>court-appointed counsel.</p> <p>Also, LASC requests that the Judicial Council consider adding a procedure to the Rule allowing for the court to remove an otherwise qualified attorney from the appointed counsel certification list. There are instances in which an attorney meets the stated requirements for certification as appointed counsel, but for various reasons the bench officers are not comfortable appointing that attorney to cases before this county’s Probate courts. A subsection to this Rule should be added providing a process for removal of qualified counsel from the list, with specificity regarding any required notice, hearing, or other process required as part of the removal procedure.</p> <p>Finally, the label for court-appointed counsel is not consistent throughout GC-010 and GC-011 as proposed. Specifically, sometimes the term “Counsel of Record” is used, while in other places it is stated as “Court-Appointed Attorney.” Even the title of the two forms are inconsistent in this regard. LASC hopes to move away from the longstanding local use of</p>	<p>good cause to decline to appoint that attorney, to terminate the attorney’s existing appointments, and to remove the attorney from any panel or list of attorneys approved to accept appointment.</p> <p>The committee has considered but does not recommend the suggested change. Rules 7.1101–7.1105 establish minimum statewide requirements as required by section 1456. Nothing in the rules provides that satisfaction of these requirements is sufficient to entitle an attorney to placement on a panel or appointment as counsel in a specific court or proceeding. If a court determines that attorneys need to meet additional requirements to qualify for initial or continued placement on a list or panel of attorneys eligible for appointment by that court, the court may set those additional requirements by local rule. The court may also establish, by local rule, a process for removing an attorney from its panel. The committee believes that any such process should be developed at the local level, perhaps in conjunction with the county bar association, to ensure that it reflects the needs of the local culture.</p> <p>“Counsel of record” is not intended as a label for court-appointed counsel. As defined in proposed rule 7.1101(b)(2), the term refers to an attorney’s level of responsibility in a judicial proceeding, not to whether the attorney was appointed or retained. The committee has added language to the rule to make that use explicit. The term is intended to make clear that the individual attorney</p>

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			<p>the term “PVP counsel” or “Probate Volunteer Panel counsel” and instead to embrace a label such as “court-appointed counsel.” Consistency with the state Rule and the Judicial Council forms would be helpful in this regard, both for LASC and the Bar.</p> <p>There is also the issue of hyphenation. Subsection (a)(1) of the proposed Rule 7.1101 defines “court appointed counsel” while the proposed GC-011 form states “Court-Appointed Counsel” in its title. LASC proposes a uniform use of the term “court-appointed counsel” throughout the Rule and JC forms.</p> <p>Request for Specific Comments: Does the proposal appropriately address the stated purpose?</p> <p>The proposal does appropriately address its stated purpose of establishing minimum guidelines for qualifications for attorney experience and education for court-appointed counsel in guardianship and conservatorship proceedings under the Probate Code. The proposal does allow the court to develop local rules to impose additional requirements. However, we suggest a slight modification to the proposed rule detailed in the suggested modifications above.</p> <p>Would the proposal provide cost savings? If</p>	<p>named in the order of appointment, and not the firm or organization, must personally satisfy the requirements (except as provided in rule 7.1102(d), rule 7.1103(d), or rule 7.1104). The committee has also, where appropriate, authorized experience as counsel of record, whether gained as appointed counsel or retained counsel, would count toward meeting the rule’s requirements.</p> <p>The committee agrees that the term “court-appointed counsel” should be hyphenated wherever it occurs in the rule and forms.</p> <p>See response above to the referenced comment.</p>

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			<p>so please quantify. It is not apparent that LASC would enjoy a cost savings caused by these proposed changes. Court staff would still be required to review, process, and track certified appointed counsel.</p> <p>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? Implementation of these proposed changes might cause minimal one-time changes to the document names in the court case system, though any significant retraining or systematic changes caused by these changes is not anticipated.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? A three-month approval period by the Judicial Council for the proposed changes would appear to be sufficient for LASC, especially since LASC and other courts usually allow a transition time during which expired Judicial Council forms are accepted. It may take beyond this time period, however, for Guide & File and other automated document programs to be</p>	<p>No further response is required.</p> <p>No further response is required.</p> <p>No further response is required.</p>

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			<p>modified by other agencies.</p> <p>How well would this proposal work in courts of different sizes? The changes will work well in a large court such as LASC.</p>	<p>No further response is required.</p>
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	<p>We welcome the several substantive changes made by this proposal.</p> <p>We note, however, that the committee’s rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that this rationale be removed or modified to prevent this result.</p> <p>Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation as has been done for family law due to the lack of a statutory mandate. We have no concerns with this.</p> <p>However, the committee goes on to opine that the court’s authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate as it does in family law, but instead flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several</p>	<p>The committee appreciates the court’s comment.</p> <p>The committee recognizes that appointment of counsel creates an attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings.</p> <p>The committee has not, however, found any support in statute, rule of court, or judicial decision for the court’s position that a proposed conservatee necessarily lacks the ability to select an attorney or to initiate an attorney-client relationship or that lack of either of those abilities is a condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee’s ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be the ultimate issue of fact for the court’s or jury’s determination in a proceeding for appointment of a conservator. The court’s decision to appoint</p>

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			<p>reasons.</p> <p>First, we believe it is incorrect. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court’s authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county’s payment of fees may create some practical authority to direct some financial aspects of the attorney-client relationship, it does not endow the county with the authority to interfere with the court’s control over court-appointed counsel. Although a county may attempt to address issues contractually, such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern.</p> <p>Does the proposal appropriately address the stated purpose? Yes.</p>	<p>counsel to represent a proposed conservatee does not, and should not be seen to, imply a determination about the client’s ability or capacity.</p> <p>Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of that relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the rules of court adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer’s obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of California (May 9, 2018, S240991) [p. 6].)</p> <p>No further response is required.</p>

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			<p>Would the proposal provide cost savings? No.</p> <p>What would the implementation requirements be for courts? Minimal.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.</p> <p>How well would this proposal work in courts of different sizes? Equally well.</p>	<p>No further response is required.</p>
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	<p>Does the proposal appropriately address the stated purpose? Yes.</p> <p>Would the proposal provide cost savings? If so, please quantify. Possibly. As mentioned in the proposal, with the new initial education requirements, court appointed attorneys would be better prepared and more knowledgeable in the field, thus, maximizing their hours worked and reducing the need to request continuances, which could also result in a reduction of fees paid by the County.</p> <p>What would the implementation requirements be for courts? For example,</p>	<p>The committee appreciates the comment. No further response is required.</p> <p>No further response is required.</p>

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			<p>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.</p> <p>We would need to inform clerical staff of the changes to ensure that court appointed attorneys are submitting the most current version of the forms. Possibility of new local rules if the judges request that attorneys have additional experience requirements. This may also impact the number of qualifying attorneys.</p> <p>Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>The preference would be to allow at least six-months to give the attorneys enough lead time to obtain additional training, if needed.</p> <p>How well would this proposal work in courts of different sizes?</p> <p>This proposal should work fine in courts of all sizes.</p>	<p>No further response is required.</p> <p>The committee notes that the rule’s requirements, though recommended to take effect September 1, 2019, would allow attorneys until January 1, 2021, to comply with the new requirements. The committee does not, therefore, recommend any further changes to defer their effective date.</p> <p>No further response required.</p>
8.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS) (no name provided)	A	<p>The JRS believes that these changes are necessary to:</p> <ul style="list-style-type: none"> • Increase the annual MCLE requirements from 3 to 6 hours, and to more clearly specify the subject matter. • Add initial education requirements of 8 hours 	<p>The committee appreciates the JRS’s comment.</p> <p>In response to other comments, the committee has revised its proposal to require three hours of annual education and added three hours of initial education. To balance this reduction in required</p>

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			<p>of related MCLE.</p> <ul style="list-style-type: none"> • Clarify that conservatorship requirements apply to both probate limited and “general” conservatorships. • Eliminate the disparate treatment of public defenders, and instead to impose on them the same requirements as any other appointed counsel. • Permit an attorney who otherwise does not meet the experience requirements to qualify based on the experience of a supervising attorney who does qualify. • Strengthen the express authorization for local courts to impose broader education and experience requirements, as we have done. • Update the Judicial Council forms to conform to these changes. 	<p>hours with the need for more attorney training, the committee has proposed dividing the experience and education requirements into two separate rules: rule 7.1102, for attorneys who wish to accept appointment under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to accept appointments under section 1470 or 1471 to represent conservatees and proposed conservatees. This division will give attorneys the opportunity to focus on one type of representation without increasing the education burden, but will require additional education hours for an attorney who wishes to accept appointment to represent both categories of client.</p> <p>Modifications in response to other comments have not affected the other benefits identified and endorsed by the JRS. Please see below for the committee’s responses to the JRS’s specific concerns.</p>

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SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

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			<p>Other Considerations: The proposal seeks to mandate court operations/procedures that, instead, should be permissive/discretionary. The proposed rule should instead be in the form of guidelines or suggested practices.</p> <p>We note that the committee's rationale includes language that seems inaccurate and may be cited by a county in the future in an effort to exert more authority over probate court-appointed counsel. We recommend that we this rationale be removed or modified to prevent this result.</p> <p>Specifically, the committee indicates that it decided not to prescribe ethical duties or standards of representation like has been done for family law due to the lack of a statutory mandate. We have no concerns with this.</p> <p>However, the committee goes on to opine that the court's authority to impose special standards of attorney conduct seems tied to the existence of a statutory financial relationship. In other words, because the money to compensate counsel does not flow through the court in probate like it does in family law but instead</p>	<p>As mandated by Probate Code section 1456, the rules establish, as rule 7.1101 has since its adoption in 2007, minimum qualifications and education and certification requirements for counsel appointed by the court under Probate Code sections 1470 and 1471. The rule leaves courts free to impose more stringent requirements. The Judicial Council would not fulfill the specific mandate in section 1456 if it did not set mandatory minimum standards in the rules.</p> <p>As noted above in the response to the similar comment submitted by the Superior Court of Riverside County, the committee recognizes that appointment of counsel creates an attorney-client relationship and that the rationale articulated in the invitation to comment may therefore be overbroad. The committee has revised its proposal to focus on the scope of the rulemaking mandate in section 1456 in comparison to analogous rulemaking mandates for counsel appointed in other types of proceedings.</p> <p>The committee has not, however, found any support in statute, rule of court, or judicial decision for the court's position that a proposed conservatee necessarily lacks the ability to select an attorney or to initiate an attorney-client relationship or that lack of either of those abilities is a condition of appointing counsel for a proposed conservatee under section 1470 or 1471. Indeed, the extent of a proposed conservatee's</p>

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			<p>flows from the county, the court lacks authority to impose standards for the representation. We are concerned with this rationale for several reasons. Appointment of counsel creates an attorney-client relationship by court order. It does so, because the client is someone who is either alleged to need a conservator or is a minor. Consequently, the client lacks the ability to select an attorney and initiate an attorney-client relationship. The court's authority to prescribe special ethical duties and standards of representation derives from its authority to appoint counsel and its duty to supervise the attorney-client relationship. Although the county's payment of fees may create some practical authority to direct some financial aspects of the attorney-client relationship, it does not endow the county with the authority to interfere with the court's control over court-appointed counsel. Although a county may attempt to address issues contractually such as conflicts of interest or minimum standards of conduct, the court is the party most likely to discover facts related to these topics and to take action to remedy a concern.</p>	<p>ability to manage personal affairs would seem, under sections 1800.3 and 1801, to be the ultimate issue of fact for the court's or jury's determination in a proceeding for appointment of a conservator. The court's decision to appoint counsel to represent a proposed conservatee does not, and should not be seen to, imply a determination about the client's ability or capacity.</p> <p>Neither has the committee found any support for the position that a trial court, having created an attorney-client relationship, has the authority to modify the terms of that relationship—including ethical duties or standards of representation—set forth by the Legislature in statute (see, e.g., Bus. & Prof. Code, § 6068) or by the Supreme Court in the California Rules of Court (see, e.g., Cal. Rules of Court, rules 9.0, 9.3, 9.5 [title nine of the rules of court adopted by Supreme Court under its inherent authority over admission and discipline of attorneys]) and the California Rules of Professional Conduct (see Rules Prof. Conduct, rules 1.1–1.18). It is perhaps worth noting in this context that, of the 70 new or amended rules of professional conduct for which the State Bar requested Supreme Court approval in 2017, the Court declined to approve only one: proposed rule 1.14, regarding a lawyer's obligations in representation of clients with diminished capacity. (See Order re Request for Approval of Proposed Amendments to the Rules of Professional Conduct of the State Bar of</p>

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				California (May 9, 2018, S240991) [p. 6.]
9.	Trusts and Estates Section of the California Lawyers Association Executive Committee (TEXCOM) by Chris Carico, Attorney at Law Los Angeles	N	<p>TEXCOM does not agree with the amendments, as proposed, but believes this issue is worthy of further consideration. TEXCOM would welcome the opportunity to work with the Probate and Mental Health Advisory Committee and other interested stakeholders on the development of an alternative proposal, in light of our concerns. As discussed below, we are concerned primarily with the following:</p> <ol style="list-style-type: none"> 1. We are concerned that the proposed amendments will not promote more effective advocacy because, in the long run, they will tend to discourage advocates from joining the appointments panels. 2. Access to the proposed specialized area of law is unduly restricted. The experience requirements appear to create a situation in which the only attorneys qualified to be on appointment panels will be attorneys who are already on appointment panels. 	<p>The committee appreciates TEXCOM’s concerns with the proposed amendments to rule 7.1101. Please see the committee’s responses to the more detailed specific comments, below.</p> <p>The committee recognizes TEXCOM’s concern and has revised the proposal to reduce the quantity of the requirements while tailoring their content more closely to the experience and education needed by an attorney to fulfill one’s legal and ethical duties to a client subject to appointment of a guardian or conservator.</p> <p>The committee does not intend to restrict entry into guardianship or conservatorship practice beyond the extent necessary to ensure that counsel appointed under section 1470 or 1471 are qualified to represent their clients’ needs and interests, as required by section 1456. The committee has revised the proposal to clarify that qualifying experience may be gained as retained or appointed counsel and to establish alternative experience requirements to allow less experienced attorneys to be appointed if they are supervised by an attorney who meets the experience requirements.</p>

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			<p>3. While not all TEXCOM members agree, there is a concern that the requirement of six hours of specialized education per year may be excessive. The requirement seems onerous not only in relation to the normally required MCLE, but also because, like the experience requirement, it seems to unduly block access to the appointments list. As anecdotal evidence, several TEXCOM members with decades of experience in conservatorship and guardianship matters would not satisfy the rule’s strict education and experience requirements to be on the panel.</p> <p><u>FACTUAL ASSUMPTIONS</u> For purposes of our analysis, we have assumed the following facts to be true:</p> <p>1. For advocacy to be effective, there must be advocates in the first place.</p> <p>2. An attorney who represents a proposed ward or conservatee under Probate Code sections 1470 and 1471 has an important job that deals with fundamental constitutional and personal rights. These attorneys must be trained to serve their clients properly.</p> <p>3. Appointment to represent proposed</p>	<p>In response to this and other comments, the committee has revised the proposal to require three hours of annual education and added only three required hours of initial education. To balance this reduction in required hours with the need for more attorney training, the committee has proposed dividing the experience and education requirements into two separate rules: rule 7.1102, for attorneys who wish to accept appointment under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to accept appointments under section 1470 or 1471 to represent conservatees and proposed conservatees. This division will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but will require additional education hours for attorneys who wish to accept appointment to represent both types of clients.</p> <p>No response required.</p> <p>The committee agrees with this assumption.</p> <p>The committee takes no position on the accuracy</p>

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			<p>conservatees and wards traditionally has been an entry point for attorneys (particularly young attorneys) to become involved in probate matters, particularly disputed matters. This has been an incentive for attorneys to make themselves available for appointment.</p> <p>4. A private attorney appointed under Probate Code sections 1470 and 1471 often is not paid, and frequently is paid at a “county rate” that is much lower than the rates generally charged by attorneys. Many of the more experienced attorneys approach the appointments calendar as a pro bono opportunity and do not seek payment from the County. It is their way to give back.</p> <p>5. Work as an appointed attorney can be satisfying. However, it is not uncommon that parties are surprised by the insertion of an appointed attorney into their affairs, and they resist and resent the appointed attorney.</p>	<p>of this assumption, but questions whether the assumed state of affairs is entirely desirable given the importance of the fundamental rights assumed in 2, above.</p> <p>The committee has no basis to determine the accuracy of this assumption and notes that the compensation of counsel is beyond the scope of this proposal. The committee also notes, however, that sections 1470(b) and 1472(a)(1) require the court, at the conclusion of the matter, to “fix a reasonable sum for compensation and expenses of counsel. Sections 1470(c)(3) and 1472(b) provide that, if the court finds that the client or the client’s estate is unable to pay all or part of that sum, the duty to pay the attorney falls on the county. Nothing in these statutes requires the court to consider the county rate when fixing reasonable compensation. For guidelines to assist the court in determining a person’s eligibility for county payment, see Cal. Rules of Court, Appendix E.</p> <p>The committee takes no position on the accuracy of this assumption, but notes that the statutes authorize (section 1470) or require (section 1471) appointment of counsel for a proposed conservatee only after a determination, presumably informed by the investigator’s report under section 1826, that the client is not otherwise represented by counsel and either has requested appointment of counsel or does not plan to retain</p>

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			<p>6. Attorneys are consistently instructed that the best way to have a successful practice is to choose one’s clients. Attorneys who are appointed cannot choose their clients, and they thereby increase the risks inherent in their practices.</p> <p>7. More than a few attorneys see service on the appointment panel as a thankless task, but agree to serve out of a sense of duty to the profession or to the community.</p> <p>8. Probate Code section 1456, specifies education and other requirements for</p> <ul style="list-style-type: none"> a. Court-employed staff attorneys b. Examiners c. Investigators d. Judges on probate assignments, and e. Attorneys appointed under Probate Code sections 1470 and 1471 	<p>counsel. The investigator’s report, due no later than five days before the hearing on the petition, must include the conservatee’s communications regarding representation by counsel. Even if a petitioner’s or proposed conservator’s surprise at the appointment of counsel might be excused notwithstanding receipt of the report, the possibility of surprise would not relieve the court of its statutory authority or duty to appoint counsel for the person when the statutory criteria warrant it.</p> <p>The committee has taken note of section 6068(h) of the Business and Professions Code, which provides that an attorney has a duty “[n]ever to reject, for any consideration personal to himself or herself, the cause of the defenseless or oppressed.”</p> <p>See response to the previous assumption.</p> <p>The committee does not question this assumption, but notes that the education requirements for probate court employees are set forth in rule 10.478 (<i>Court Investigator</i>: 18 hours within one year of start date; <i>Court attorney</i>: 18 hours within 6 months; <i>Examiner</i>: 30 hours within one year, including 18 hours on guardianships and conservatorships. All of the foregoing: 12 hours of annual education. For attorneys and examiners,</p>

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			<p>Of the persons employed in these categories, only private attorneys pay for their own education, and only private attorneys are not paid regular salaries for their work with respect to guardianships and conservatorships. In many counties, the only attorneys commonly appointed under Sections 1470 and 1471 are private attorneys.</p> <p><u>ANALYSIS</u> <u>1. The Increase in the MCLE Requirement Is Likely to Discourage Attorneys from Making Themselves Available for Appointment</u></p> <p>A. We Believe the Proposed Requirement of Six Hours of Specialized Education Each Year is Excessive</p> <p>The rule proposes requiring attorneys to complete six hours of specified continuing education each year. Specifically, it proposes:</p> <p>Except as provided in (2) <u>each calendar year</u> an attorney must, as a condition of ongoing or further appointment, complete six hours of education approved for MCLE credit by the State Bar in one or more of the subjects specific in (g)(1). (Emphasis</p>	<p>six of the 12 hours must be in guardianships and conservatorships, including fiduciary accounting.). The education requirements for judicial officers are set forth in rule 10.468 (Initial: 6 hours in first 6 mos.; continuing: varies depending on size of court, 9 or 18 hours every three years). These requirements are much more demanding than those proposed for court-appointed counsel in rule 7.1101 as circulated for comment (8 hours of initial education and 6 hours of annual education) or in rules 7.1102 and 7.1103 as currently proposed (three hours of initial education and three hours of annual education).</p> <p>The committee shares TEXCOM’s concern that the burden of the rule’s educational requirements on attorneys not exceed their benefit to clients.</p> <p>The committee recognizes that six hours of annual education are more than are currently required under rule 7.1101. To balance the demand on attorneys with the need for well-trained attorneys, the committee has divided the experience and education requirements into separate rules: rule 7.1102, for attorneys who wish to accept appointment to represent wards or proposed wards; and rule 7.1103, for attorneys who wish to accept appointment to represent conservatees and proposed conservatees. The committee has reduced the number of hours required for each type of appointment to three hours annually and three hours within the year preceding initial</p>

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			<p>added.)</p> <p>Subdivision (g)(1) then lists education topics that are specific to guardianships and conservatorships. These range from statutes and rules of court applying to guardianships and conservatorships to special considerations in representing a child or an older adult.</p> <p>As noted in the Implementation discussion of the proposed rule, California attorneys generally must complete 25 hours of continuing education every three years, which education must include ethics and substance abuse. If an attorney who wishes to make himself or herself available for appointment is required to take 6 hours of specialized coursework each year, then he or she will have consumed much of his or her mandatory MCLE obligation (18 out of 25</p>	<p>appointment. An attorney wishing to accept appointment to represent clients in both categories would be required to meet the requirements of both rules, that is, six hours of education annually. Even for these attorneys, the committee notes that six hours per year, though more than the 8 hours every three years required of appointed counsel in child welfare proceedings, is less than the 8 hours per year required of counsel appointed in juvenile justice proceedings or family law custody proceedings.</p> <p>The committee has also revised the proposal to separate the subjects applicable to attorneys appointed to represent wards or proposed wards (rule 7.1102(g)) from the subjects applicable to attorneys appointed to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity (rule 7.1103(g)). An attorney who wishes to accept appointment to represent clients in only one category may focus on training directly relevant to that representation.</p> <p>The State Bar’s requirement of 25 hours every three years sets a minimum threshold. An attorney may take as many additional hours as needed or desired to acquire and maintain competence in a chosen area of practice.</p>

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			<p>hours) with the required specialized classes, and will still be required to take the ethics and substance abuse courses.</p> <p>The attorney who takes the required courses will be specialized for guardianship and conservatorship work, but if he or she wishes to take other course work—for example, courses in taxation, recent developments, litigation and discovery—he or she will be burdened in a way that attorneys specializing in other fields are not burdened.</p> <p>Since guardianship matters infrequently involve substantial estates, and court-appointed counsel is generally compensated at the County Rate, there is a significant financial disincentive for the highly qualified attorneys with thriving practices to participate on the panels as a service to the court and the public.</p> <p>Highly qualified attorneys may choose to volunteer time on the panel as a service to the court and the public. But, the addition of substantial education requirements that the private attorney must personally pay for creates another large disincentive to their participation. In short, it makes the private attorneys pay to</p>	<p>The committee understands that counsel eligible for court appointment in other specialized areas of law are required to meet experience and education requirements equally or more demanding than the requirements proposed here.</p> <p>The committee understood from assumptions 4 and 7, above, that—notwithstanding the statutory requirement that the court, on conclusion of the matter, fix a reasonable sum for compensation and expenses of counsel—appointed counsel serve out of a sense of duty, usually pro bono. Counsel who serve under those expectations would seem likely to regard compensation at the county rate as a windfall. Nevertheless, the committee does not read section 1470 or 1472 to require or authorize the court to consider a county rate when fixing reasonable compensation.</p> <p>The committee has reduced the number of hours of education to allow a broader set of attorneys to meet them. The hours required would be consistent with or fewer than the hours required for attorneys to qualify for appointment in child welfare, juvenile justice, and family law custody proceedings.</p>

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			<p>volunteer.</p> <p>Moreover, if we presume that the State Bar’s requirement of 25 hours of MCLE in three years is reasonable, then the proposed rule’s requirement of six hours of specialized education each year appears unreasonable.</p> <p>More generally, it seems likely that the increase in specialized MCLE required by the proposed rule will be a burden that will discourage attorneys from making themselves available for appointment. This applies especially to young attorneys who have traditionally assisted in filling the appointments lists.</p> <p>B. We Do Not Believe the Proposed Alternatives Solve the Problem</p> <p>The Probate and Mental Health Advisory Committee (Committee) acknowledges that, “The proposed amendments to the education requirements may lead to a short-term reduction in the number of qualified attorneys available for appointment.” TEXCOM believes this is definitely the case, but seriously questions whether the reduction will be short-term only.</p>	<p>The committee notes that the State Bar establishes “<u>Minimum</u> Continuing Legal Education” requirements. Attorneys who practice in areas of law that require specialized knowledge are encouraged to complete additional hours of education. That encouragement should be especially emphatic in areas of practice that implicate fundamental rights to the extent that the Legislature has required the establishment of minimum hours of specialized education.</p> <p>The committee has reduced the number of hours of education to allow a broader set of attorneys to meet them. The hours required would be consistent with or fewer than the hours required for attorneys to qualify for appointment in child welfare, juvenile justice, and family law custody proceedings.</p>

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			<p>The Committee suggests that this predicated short-term reduction in the number of qualified attorneys available for appointment will be counteracted by “the alternative experience requirements in rule 7.1101(e) and the transitional provisions in rule 7.1101(k).”</p> <p>However, the “alternative experience requirements in rule 7.1101(e)” will not minimize the effect of the new education requirements, because rule 7.1101(e) itself requires the appointed attorney to have “completed the education required in (d).” Moreover, the alternative experience requirements will open the door of appointment eligibility to a very small number of private attorneys who have met the new education requirements, and who can be “directly supervised by an attorney working in the same firm, organization or office who satisfies the applicable experience requirements in (d).”</p> <p>Similarly, the transitional provisions in rule 7.1101(k) will not have a real impact on the number of attorneys who make themselves eligible for appointment. At best, those rules state that an attorney qualified to be appointed before 2020 can remain on his or her cases even if he or she opts out of the new system. It seems likely that the new MCLE rules will have a sustained long-term effect of discouraging attorneys from making themselves available for appointment.</p>	<p>The committee has revised the proposal to remove the requirement that the attorney qualified under rule 7.1102(d) or rule 7.1103(d) have met the initial education requirements as well as to remove the requirement that the supervising attorney work in the same firm or organization as the appointed attorney.</p> <p>The committee has revised the proposal to remove the transitional provisions.</p>

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			<p><u>2. The Experience Requirements Present a Potential Problem That May Slowly Reduce the Number of Attorneys Eligible for Appointment</u></p> <p>Under proposed rule 7.1101(d)(2)(A), an attorney can be qualified to be on the conservatorship appointment panel if, “within the three years immediately before the date of first availability,” he or she “(A) represented at least three conservatees or proposed conservatees in either probate or LPS conservatorships.” The problem is that the only realistic way to represent three proposed conservatees in three years is to be appointed by the court to represent them. But, if an attorney can only be appointed if the attorney has already been appointed, how does the attorney get appointed in the first place?</p> <p>Alternatively, under proposed rule 7.1101(d)(2)(B) and (C), an attorney can be qualified to be on the conservatorship appointment panel if he or she</p> <p>Completed at least two of the following tasks in the last three years:</p> <ul style="list-style-type: none"> (i) Represented petitioners in three conservatorship cases from start to finish, or (ii) Represented a party in at least three contested conservatorships, or (iii) Represented someone for whom the court could appoint a legal counsel under 	<p>The committee has modified its recommendation to allow the required experience to have been acquired within five years preceding acceptance of initial appointment.</p>

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			<p>various provisions of the Probate Code (presumably without having been appointed) AND (i) Represented fiduciaries in three complete court-filed accounting proceedings, or (ii) Prepared three wills or trusts, three durable powers of attorney for health care, and three durable powers of attorney for asset management.</p> <p>We recognize that this proposed rule is similar in ways to the existing rule, changing the relevant time period from five years under the current rule to three years under the proposal. We believe this entire rule should be re-evaluated as an experience qualification. Few young attorneys will be in on the “start” of a conservatorship case, and some conservatorship cases literally never end – depending on the lifespan of the conservatee. Not many attorneys have three conservatorship cases in three years, and even fewer have three contested conservatorship cases in three years. An attorney who wanted to get into the conservatorship field, and who wanted to make himself or herself available for appointment, would be hard pressed to obtain that experience.</p> <p>With the prevalence of revocable trusts, not many attorneys will do three complete court-filed accountings in three years.</p>	<p>The committee regrets any misunderstanding caused by the proposed language. The rule is not intended to require an attorney to have experience representing a petitioner following the conclusion of the hearing on the petition unless the petition was granted, in which case, the attorney must have continued to assist the client in obtaining letters of conservatorship.</p> <p>The committee agrees with the comment and has removed the accounting requirement from the rule.</p>

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			<p>Finally, we believe the idea that preparation of a few estate planning documents (under proposed rule 7.1101(d)(2)(C)(ii), which would change the current requirement from five of the identified documents to three) would in any way prepare an attorney to represent a proposed conservatee in a real court case is an anomaly. In today’s world of computerized forms, an attorney might meet this requirement within a week or two of passing the bar. Experienced conservatorship lawyers have serious concerns about including this as an experience requirement.</p> <p>We are also concerned about the idea that representing a fiduciary in an accounting proceeding could prepare an attorney to represent a proposed conservatee or ward. The tasks are very different.</p> <p><u>Illustrations</u></p> <p>If a medical doctor with a geriatrics specialty went to law school and took courses specializing in guardianship and conservatorship law and graduated first in her class, then hung up a shingle to practice as a solo attorney, she could not qualify to be on an appointments panel. As a solo with no in-house supervisor, she might never qualify to be on an appointments panel.</p> <p>If a 65-year old attorney with a great amount of litigation experience in the probate field, who</p>	<p>The committee agrees that general estate planning experience does not prepare an attorney to represent a conservatee and, as suggested, has eliminated this element from the applicable experience requirements.</p> <p>The committee agrees that preparing an accounting, without more, would not sufficiently prepare an attorney to represent a conservatee or ward. The committee has removed that requirements from the proposed rules.</p> <p>The committee has modified its recommendation to remove the requirement that the supervising attorney work for the same organization.</p>

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			<p>had represented many proposed conservatees in the past, but not in the recent past, wished to go on the appointments panel to finish his or her career with some pro bono work, he or she would not qualify for the appointments panel.</p> <p>TEXCOM questions whether this is the policy we want and believes the requirements should be more flexible, perhaps allowing the probate judges to exercise some discretion and permitting some variation based on different circumstances in the various counties.</p> <p><u>Alternative Work Experience</u> We endorse the concept of “alternative work experience” but believe it should be expanded to include an arrangement that involves supervision by a more experienced lawyer in a different firm and not just the same law firm. Otherwise, attorneys in small firms or solo practitioners will have little to no ability to obtain the necessary work experience in the field.</p> <p>As noted above, the attorney needs work experience to get on the panel, but the only way to get the experience as court-appointed counsel is to be on the panel and be appointed by the court. As an additional alternative, for courts that have the necessary resources, the combination of an in-depth multi-day training</p>	<p>In response to the concerns raised by TEXCOM and other commentators, the committee has relaxed the amount of experience and education required by the proposed rules while focusing their content more directly on conservatorships and guardianships. In addition, the rules authorize smaller courts to waive some or all of the experience and initial education requirements.</p> <p>The committee agrees with the suggestion and has modified its recommendation to remove the requirement that the supervising attorney work for the same organization.</p> <p>The committee has modified the proposal to clarify that the required experience may be acquired by representing appropriate clients, regardless of whether the representation was initiated by appointment or retention. In addition, the alternative experience requirements in proposed rules 7.1102(d) and 7.1103(d) allow an</p>

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SPR18-33

Guardianship and Conservatorship: Court-Appointed Counsel (amend Cal. Rules of Court, rule 7.1101; revise forms GC-010 and GC-011)

All comments are verbatim unless indicated by an asterisk (*)

	Commentator	Position	Comment	Committee Response
			<p>course for newer lawyers focusing on guardianships and conservatorships and assignment of an experienced attorney to serve as mentor to the newer attorney may provide newer attorneys with the necessary opportunity to get the required experience.</p> <p>To encourage older more experienced attorneys to serve as mentors without the risk of liability for the newer attorneys' mistake, it would need to be clear that the newer attorney alone is counsel for the client, with the associated malpractice risk.</p> <p>CONCLUSION Conservatorship and guardianship cases are important, and deal with some of the most fundamental rights. Proposed conservatees and wards deserve qualified counsel, who are prepared to represent them in cases that are crucial to their long-term care and well-being. Due process rights must be recognized, guarded and preserved. Advocates must understand the issues and be able to communicate with their clients.</p> <p>It makes sense to design rules to do our best to ensure that attorneys representing proposed conservatees and wards are qualified. That is the purpose underlying Probate Code section 1456.</p>	<p>attorney without the required experience to accept appointment if the attorney has appropriate institutional support and supervision.</p> <p>The committee believes that the formal relationship between an attorney appointed under section 1470 or 1471 and an attorney acting as a supervisor is best left to an agreement between the attorneys themselves or their firms and organizations. Nothing in the proposed rules requires that a supervising attorney be named in an appointment order.</p> <p>The committee agrees that the rules required by section 1456 must ensure that appointed attorneys are qualified. The comments on this proposal reveal a wide range of opinion regarding the nature and amount of experience and education that would be sufficient for that purpose. The</p>

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	Commentator	Position	Comment	Committee Response
			<p>On the other hand, we do not believe the State should impose education requirements that are so burdensome that qualified attorneys who are otherwise willing to make themselves available for appointment opt out, because the MCLE becomes too burdensome and expensive. We also do not believe the State should impose experience requirements that are difficult for many attorneys to reach.</p> <p>The proposed rule appears to be designed to establish a group of specialists who will be able to do the best possible job as appointed attorneys for proposed conservatees and wards. However, if the rule in fact creates specialists, the specialists will not find themselves compensated like other specialists in the trust and probate field, and they will be doing work that often is not satisfying. This suggests that, as time goes by, the rules will be self-defeating, and that good and experienced attorneys will leave the field. At the same time, young and eager attorneys will find it difficult to make themselves qualified to serve. Ultimately, there is a danger that the perfect is being made the enemy of the good.</p>	<p>committee intends the proposed rules to establish minimum requirements that ensure adequate qualification without being excessively burdensome or difficult to satisfy.</p> <p>The committee’s intent in developing the rules in this proposal has been to fulfill the mandate of section 1456: to specify minimum qualifications, hours and subject matter of education, and reporting requirements to ensure adequate representation by attorneys appointed under section 1470 or 1471. The specification of any minimum standards will necessarily reduce the size of the pool of attorneys qualified to accept appointment. The committee has consistently borne this effect in mind and sought to mitigate it without abdicating its statutory duty.</p>
10.	Tulare County Public Guardian’s Office by Francesca Barela, Deputy Public Guardian Visalia	A	I feel it is important that our conservatees have adequate counsel. Our clients need good representation. Continuing education is important as well as knowledge of Probate Codes and laws. I agree with the proposed changes.	The committee appreciates the comment. No further response is required.

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