

Invitation to Comment

Title	Probate Guardianships: Continuing Education Requirements for Counsel Appointed for Minors in Guardianships of the Person (amend rule 7.1101 of the California Rules of Court)
Summary	The proposed amendment to rule 7.1101 would permit counsel appointed to represent minors in guardianships of the person to satisfy the rule’s continuing education requirements by satisfying the continuing education requirements applicable to counsel appointed to represent children in family law custody matters or in juvenile court dependency proceedings.
Source	Probate and Mental Health Advisory Committee Hon. Mitchell L. Beckloff, Chair
Staff	Douglas C. Miller Senior Attorney 818-558-4800 douglas.miller@jud.ca.gov

Rule 7.1101 of the California Rules of Court establishes the qualifications and continuing education required of attorneys appointed by courts to represent conservatees or proposed conservatees in probate conservatorships and minors in probate guardianships. Attorneys may be qualified for appointments to represent minors in guardianship proceedings if they qualify for appointment as counsel for minors in Family Code child custody matters under rule 5.242 or in juvenile court dependency proceedings under rule 5.660 and local rules. However, these attorneys must satisfy the continuing education requirements of rule 7.1101 in addition to the continuing education requirements of the family law or juvenile court rules.¹

Rule 7.1101(f) requires counsel to annually complete three hours of continuing education that qualifies as continuing education for State Bar–certified specialists in estate planning, probate, and trust law. But most guardianships are of the person only; they do not involve estates, accountings, property management, or other issues that concern estate planning, probate, and trust specialists. Continuing education programs for these specialists do not focus on guardianship practice.

Continuing education requirements for appointed attorneys in family law departments and in juvenile dependency proceedings do emphasize training in child custody issues that are also relevant to person-only guardianship proceedings. Rule 5.242(d) requires eight hours

¹ See rule 7.1101(b)(1)(C).

of continuing education annually in specific topics listed in the rule. These include statutes, rules of court, and case law relating to child custody and visitation,² representation of children in custody and visitation litigation, and special issues involved in representing children, including communicating with them; stages of their development; recognition, evaluation, and understanding evidence of child abuse and neglect, family violence, and substance abuse and their effect on children; and how to work with multidisciplinary experts. Rule 5.660(d)(3) requires appointed counsel in juvenile dependency proceedings to complete eight hours of continuing education every three years. Topics include child development, child abuse and neglect, substance abuse, and domestic violence.

The Probate and Mental Health Advisory Committee proposes that the Judicial Council amend rule 7.1101 to permit attorneys who are qualified for appointment to represent children in guardianships of the person based on their qualifications under rule 5.242 or rule 5.660, to satisfy the continuing education requirements of rule 7.1101 by completing the continuing education required by either of those other rules.

The text of amended rule 7.1101 follows this invitation to comment.

² Some statutes that govern family law custody and visitation litigation also directly apply to contested guardianships of the person. (See Prob. Code, § 1514(b); Fam. Code, §§ 3020–3032, 3040–3048.)

Rule Proposal

Rule 7.1101 of the California Rules of Court would be amended, effective January 1, 2011, to read as follows:

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

4 (a) * * *

5
6 (b) **Qualifications of appointed counsel in private practice**
7

8 Except as provided in this rule, each counsel in private practice appointed by
9 the court on or after January 1, 2008, must be an active member of the State
10 Bar of California for at least three years immediately before the date of
11 appointment, with no discipline imposed within the 12 months immediately
12 preceding any date of availability for appointment after January 1, 2008; and
13

14 (1) *Appointments to represent minors in guardianships*
15

16 For an appointment to represent a minor in a guardianship:
17

18 (A) * * *

19
20 (B) At the time of appointment, must be qualified:
21

22 (i) For appointments to represent children in juvenile
23 dependency proceedings under rule 5.660 and the court's
24 local rules governing court-appointed juvenile court
25 dependency counsel; or
26

27 (ii) For appointments to represent children in custody
28 proceedings under the Family Code under rule 5.242,
29 including the alternative experience requirements of rule
30 5.242(g).
31

32 (C) Except as provided in (f)(2), counsel qualified for appointments in
33 guardianships under (B) must satisfy the continuing education
34 requirements of this rule in addition to the education or training
35 requirements of the rules mentioned in (B).
36

37 (2)–(3) * * *
38

1 (c)—(e)
2

3 (f) **Continuing education of appointed counsel**
4

5 (1) Except as provided in (2), beginning on January 1, 2008, counsel
6 appointed by the court must complete three hours of education each
7 calendar year that qualifies for Minimum Continuing Legal Education
8 credit for State Bar–certified specialists in estate planning, trust, and
9 probate law.

10
11 (2) Counsel qualified to represent minors in guardianships under b(1)(B)
12 and who are appointed to represent minors in guardianships of the
13 person only may satisfy the continuing education requirements of this
14 rule by satisfying the education or training required under either rule
15 mentioned in b(1)(B).

16
17 (g)—(i) * * *
18

Item SPR10-40 Response Form

Title: Probate Guardianships: Continuing Education Requirements for Counsel Appointed for Minors in Guardianships of the Person (amend Cal. Rules of Court, rule 7.1101)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization

Address: _____

City, State, Zip: _____

To Submit Comments

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

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

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