JUDICIAL COUNCIL OF CALIFORNIA
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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: September 24, 2019

Title
Probate Conservatorship and Guardianship: Qualifications and Education of Appointed Counsel

Rules, Forms, Standards, or Statutes Affected
Adopt Cal. Rules of Court, rules 7.1101–7.1105; repeal rule 7.1101; revise form GC-010; revoke form GC-011

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

Agenda Item Type
Action Required

Effective Date
January 1, 2020

Date of Report
September 4, 2019

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Executive Summary

The Probate and Mental Health Advisory Committee recommends repealing one rule of court and adopting five rules to update the minimum qualifications and annual education required for counsel to be appointed by the court under Probate Code sections 1470 and 1471 to represent wards and conservatees in proceedings under division 4 of the Probate Code. The committee also recommends revising one form for attorneys to certify their eligibility for appointment, approving the revised form for optional use, and revoking a second certification form. The amendments and revisions respond to suggestions from courts, stakeholders, and advocates to tailor the required qualifications and education more closely to statute, ensure the knowledge and experience needed for effective representation, and simplify the certification process.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2020:

1. Repeal rule 7.1101 of the California Rules of Court;

2. Adopt rule 7.1101 to specify the scope of the chapter, define the terms used in the chapter, and establish general qualifications for appointed counsel;

3. Adopt rule 7.1102 to specify minimum qualifications and annual education related to guardianships required for an attorney to be appointed 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;

4. Adopt rule 7.1103 to specify minimum qualifications and annual education related to conservatorships and legal capacity required for an attorney to be appointed under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity in a conservatorship or other proceeding under division 4 of the Probate Code;

5. Adopt rule 7.1104 to affirm a court's authority to establish local procedures to administer appointment of qualified attorneys and authorize the court, on an express finding of necessity, to appoint an attorney who does not meet the minimum qualifications or annual education requirements in rule 7.1102 or 7.1103;

6. Adopt rule 7.1105 to specify initial and annual certification requirements;

7. Revise *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to conform to the amended certification requirements, incorporate annual certification, simplify the certification process, and approve the form for optional use; and

8. Revoke *Annual Certification of Court-Appointed Attorney* (form GC-011).

The text of the recommended rules, the revised form, and the revoked form are attached at pages 12–27.

Relevant Previous Council Action

The Judicial Council adopted rule 7.1101, effective January 1, 2008, in response to the mandate in section 1456 of the Probate Code and placed the rule in chapter 23 of the Probate Rules, title 7 of the California Rules of Court. Form GC-010 was adopted for mandatory use, effective March 1, 2008. Form GC-011 was adopted for mandatory use, effective January 1, 2009.

Analysis/Rationale

Probate Code section 1456(a) requires the Judicial Council to adopt a rule of court specifying the qualifications, number of hours of annual education "in classes related to conservatorships or guardianships," "particular subject matter" to be included in the required annual education, and reporting requirements for any attorney appointed by the court under Probate Code section 1470

or 1471.[1] Section 1470(a) authorizes the court to appoint private counsel for "a ward, a proposed ward, a conservatee, or a proposed conservatee" in any proceeding under division 4 of the Probate Code if the court determines the person is not represented and that the appointment "would be helpful to the resolution of the matter" or "is necessary to protect the person's interests." (Prob. Code, § 1470(a).) Section 1471 mandates court appointment of the public defender or private counsel to represent the interests of "a conservatee, proposed conservatee, or person alleged to lack legal capacity" at the person's request in specified conservatorship proceedings (*id.,* § 1471(a)); in the absence of a request in those same proceedings if the person does not plan to retain counsel and appointment "would be helpful to the resolution of the matter" or "is necessary to protect the [person's] interests" (*id.,* § 1471(b)); and immediately, whether requested or not, in any proceeding to establish a limited conservatorship if the proposed conservatee has not retained and does not plan to retain legal counsel (*id.,* § 1471(c)).[2]

Rule 7.1101 of the California Rules of Court[3] was adopted to implement the mandate in section 1456. In the years since its adoption, however, the rule has proven challenging to implement, burdensome on attorneys, and inadequate to ensure the protection of represented persons. The recommended repeal of existing rule 7.1101, reorganization of chapter 23 of title 7 into five separate rules, and amendment of the existing requirements are intended to address these issues and better implement the statute's requirements.

New rule 7.1101

The first recommended rule clarifies the scope of the chapter's application, defines certain terms as used in the rules, and establishes general qualifications. Subdivision (a) specifies that chapter 23 applies only to counsel appointed under sections 1470 and 1471. It does not, as some have interpreted, apply to counsel appointed under other statutory authority or to retained counsel. Subdivision (b) amends the definitions of several terms in existing rule 7.1101(a); deletes the

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[1] Prob. Code, § 1456(a)(1), (3)–(5). Probate Code section 1456 was added by Assembly Bill 1363 (Stats. 2006, ch. 493, § 3), part of the Omnibus Conservatorship and Guardianship Reform Act of 2006. The Omnibus Act comprised four separate bills—*Senate Bill 1116*, *Senate Bill 1550*, *Senate Bill 1716*, and *Assembly Bill 1363*—enacted as Stats. 2006, chs. 490–493, respectively, to address perceived abuses of the conservatorship process by court-appointed conservators. All further statutory references are to the Probate Code unless otherwise specified.

[2] In addition to the proceedings specified in section 1471(a)(1)–(5), other sections of the Probate Code invoke the authority of section 1471 to require appointment of counsel. (See, e.g., Prob. Code, §§ 1852 (if the court determines that the conservatee wishes to petition the court to terminate the conservatorship or for other specified orders); 2356.5 (petition for order authorizing placement or medication of person with major neurocognitive disorder); 2357 (petition for order authorizing medical treatment); 3140 (petition to approve transaction, spouse alleged to lack capacity); 3205 (petition to determine patient's capacity to make health care decision). See also Welf. & Inst. Code, § 5350.5 (referral of probate conservatee for mental health assessment).) Because these appointments depend on the authority of section 1470 or 1471, the requirements in recommended rules 7.1101–7.1105 apply to them.

Still other sections authorize or require appointment of counsel independent of the authority in section 1470 or 1471. (See, e.g., Prob. Code, §§ 1954 (petition for authority to consent to person's sterilization); 2620.2 (failure of appointed fiduciary to file accounting).) Neither section 1456 nor the rules in this proposal establish qualifications or education requirements for appointment under section 1954 or 2620.2. Courts are encouraged to establish local requirements for appointment under these provisions.

[3] All further rule references are to the California Rules of Court unless otherwise specified.

definition of "counsel in private practice," which is no longer used in chapter 23; and adds a new definition of "trial." The definition of "appointed counsel" clarifies that the term means an attorney appointed by the court who assumes direct, personal responsibility for representation.

Subdivision (c) establishes basic licensing, disciplinary status, and liability insurance requirements that all appointed attorneys must meet. Attempting to increase access to appointments for recently admitted attorneys, it no longer requires an attorney to have been an active bar member for three years before initial appointment and allows appointment of registered legal aid attorneys qualified to practice law in California under rule 9.45. Subdivision (c) also applies the same professional liability coverage requirements to all attorneys regardless of their practice setting, incorporates by reference the specific qualifications and education requirements in rules 7.1102 and 7.1103 for each type of appointment, and requires compliance with any local rules established by the appointing court. Subdivision (d) clarifies that a court has the authority to adopt additional, more rigorous requirements by local rule, and subdivision (e) states that the new rules do not apply retroactively, freeing an attorney who has already filed an initial certification of qualifications from the requirement to file a new one.

New rules 7.1102 and 7.1103

The second and third rules form the heart of chapter 23. Each establishes a distinct set of qualifications and education requirements to represent a distinct set of clients.

Rule 7.1102

This rule applies to attorneys available for appointment to represent wards or proposed wards in probate guardianships and related proceedings. Except for authorizing qualification by representation of three petitioners or objectors in addition to three proposed wards—and requiring experience in at least one contested matter or trial—the experience-based qualifications in rule 7.1102(a) do not differ substantially from those in the existing rule. An attorney may still qualify by meeting the experience required for appointment in child welfare proceedings or family law custody proceedings, too.

Rule 7.1102(b) establishes alternative qualifications through which less-experienced attorneys may become eligible for appointment. The first alternative allows appointment of an attorney who works for an attorney, a firm, or a court-approved legal services organization to be appointed without the experience in subdivision (a) if the attorney is supervised by or working in close consultation with a qualified attorney who meets the experience requirements. The second alternative, intended to allow sole practitioners to qualify, allows appointment of an attorney who has completed, within the 12 months preceding initial availability for appointment, three hours of professional education in the subjects required for annual education (see below) if the attorney is working in close consultation with a qualified attorney who meets the experience requirements.

Subdivisions (c) and (d) require three hours of annual education in subjects directly related to guardianships and child representation. To ensure that an appointed attorney has adequate knowledge related to guardianships, the committee has separated these hours from the hours

required for appointment related to conservatorships and narrowed the range of applicable subjects. To ensure that attorneys have access to education in these subjects, the rule authorizes completion of the required education using any method of education, including distance learning, approved by the State Bar. The committee is working with Judicial Council staff to develop and provide webinars and other online training that will enable attorneys to meet the requirements at no cost.

Rule 7.1103

This rule applies to attorneys available for appointment to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity in probate conservatorships and related proceedings. Rule 7.1103(a) narrows and consolidates the experience-based qualifications for these attorneys. In addition to having represented at least three conservatees or proposed conservatees in probate or mental health conservatorships, an attorney may now qualify for appointment by virtue of having represented three petitioners, objectors, persons alleged to lack legal capacity, or persons alleged to be gravely disabled in any proceedings under division 4 of the Probate Code or the Lanterman-Petris-Short (LPS) Act.[4] To simplify the requirements, no type of representation need be combined with any other type. The committee has also eliminated two existing avenues of experience-based qualification: representation of a fiduciary on a petition to approve an accounting and preparation of estate planning documents. The relevance of these types of experience to conservatorship proceedings is too attenuated to justify their continued inclusion.[5]

Like rule 7.1102(b), rule 7.1103(b) establishes alternative qualifications through which less-experienced attorneys may become eligible for appointment. The first alternative allows appointment of an attorney who works for an attorney, a firm, a public defender's office, or a court-approved legal services organization to be appointed without the experience in subdivision (a) if the attorney is supervised by or working in close consultation with a qualified attorney who meets the experience requirements.[6] The second alternative, intended to allow sole practitioners to qualify, allows appointment of an attorney who has completed, within the 12 months preceding initial availability for appointment, three hours of professional education in the subjects required for annual education (see below) if the attorney is working in close consultation with a qualified attorney who meets the experience requirements.

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[4] Welf. & Inst. Code, §§ 5000–5556. The LPS Act authorizes involuntary detention, treatment, and conservatorship of persons who are gravely disabled as the result of a mental health disorder. In many superior courts, LPS proceedings are heard by the probate division.

[5] This conclusion is reinforced by the independence of the authority to appoint counsel for a conservatee when a conservator fails to file an account from the appointment authority in section 1470 or 1471. See Prob. Code, § 2620.2(c)(4)(A) and *supra,* note 2.

[6] These rules no longer expressly distinguish private counsel from deputy public defenders. The requirements needed to accommodate the differences in practice models, both public and private, have been retained in generally applicable rules. See, e.g., Cal. Rules of Court, rules 7.1101(c)(3) (insurance or self-insurance), 7.1103(b) (alternative qualifications).

Subdivisions (c) and (d) require three hours of annual education in subjects directly related to conservatorships and the representation of older adults or persons with disabilities. To ensure that an appointed attorney has adequate knowledge related to conservatorships, the committee has separated these hours from the hours required for appointment related to guardianships and narrowed the range of applicable subjects. To ensure that attorneys have access to education in these subjects, the rule authorizes completion of the required education using any method of education, including distance learning, approved by the State Bar. The committee is working with Judicial Council staff to develop and provide webinars and other online training that will enable attorneys to meet the requirements at no cost.

New rule 7.1104

This rule affirms local courts' authority to establish additional procedural requirements for appointment. It also replaces the existing exemption for courts with four or fewer authorized judges with a narrower exception that can apply to a court of any size. In consideration of the needs of both courts and persons to be represented, the committee recommends expanding the authority to make an exception to the qualifications and education requirements from courts with four or fewer authorized judges to all courts. At the same time, the committee recommends authorizing appointment under the exception only on an express finding of necessity. That necessity could include a lack of qualified attorneys available to accept appointment or the need to appoint an attorney with specific qualifications to meet the needs—including, for example, language access needs—or interests of the person to be represented.

New rule 7.1105

Rule 7.1105 amends the requirements in existing rule 7.1101(h) for initial and annual attorney certification of qualifications. The new rule separates certification of basic licensing, disciplinary status, and insurance requirements from certification of qualifications related to the type of representation for which the attorney wishes to be available for appointment and the annual education requirements. It also amends the requirement to notify the court of professional discipline, requiring notification in writing within five court days. The rule affirms a local court's authority to require documentation of any statement in the certification and requires the form to be kept confidential by the receiving court.[7]

Forms GC-010 and GC-011

The recommended revisions to Judicial Council form GC-010 conform to the requirements in the new rules, simplify the certification process by breaking the form into separate elements—licensing and discipline, insurance, initial qualifications, and annual education—and incorporating the elements needed for annual certification, giving clear instructions for completing each element required for either initial or annual certification, and providing sufficient blank space for additional information required by the rules, the form instructions, or

[7] The transitional provisions in existing rule 7.1101(d) and the reporting provision in existing rule 7.1101(i) have been eliminated and not replaced. The reporting provision is not needed because certification to the appointing court is sufficient to ensure that attorneys comply with the requirements. The transitional provisions are not needed because the rules apply only prospectively.

local requirements. With the incorporation of the annual certification into form GC-010, form GC-011 is no longer needed and can be revoked without loss of function.

Policy implications

The recommendation implements a statutory mandate. In line with the statutory purpose, the recommendation also improves the quality of justice and service to the public by ensuring that wards and conservatees subject to judicial proceedings that affect their fundamental interests receive effective legal representation by qualified and well-trained attorneys.

Comments

The proposal was circulated for public comment to the standard list of persons and institutions interested in probate and mental health proceedings twice: once as a single rule in spring 2018 and again as five separate rules in winter 2019. Ten commenters, including three superior courts, three advocacy organizations, the Executive Committee of the Trusts and Estates section (TEXCOM) of the California Lawyers Association, and the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee, responded in spring 2018. A chart with the full text of all comments received in spring 2018 and the committee's updated responses is included as Attachment A.

Five commenters agreed with the proposal, four agreed and suggested modifications, and one, TEXCOM, did not agree. Most commenters, even those that agreed, offered suggestions for improving the proposal. The suggestions tended to reflect one of two opposed positions. TEXCOM and some courts thought the proposal went too far by requiring experience within the three years immediately preceding initial availability for appointment rather than the existing five; narrowing the types of qualifying experience and the subject matter of qualifying education; increasing the hours of annual education required to eight, and adding a requirement for initial education. They were concerned that the increased burden would discourage attorneys from making themselves available for appointment under sections 1470 and 1471. Other commenters thought the proposal did not go far enough, and suggested that the committee require more annual education in a wider variety of subjects and establish ethical and performance standards for attorneys appointed under sections 1470 and 1471. Committee members' views diverged along similar lines.

After deliberation, the committee circulated for public comment a significantly revised version of the proposal, separated into five proposed rules, to the same list of persons and institutions in winter 2019. The proposed rules separated the qualifications and education requirements for attorneys appointed to represent wards from those appointed to represent conservatees. They also returned the time frame for qualifying experience to five years before initial availability for appointment, reduced the hours of required education, and made other changes in response to the comments received.

Nine commenters—including three superior courts, TEXCOM, the JRS, and the Probate Committee of the California Judges Association (CJA)—responded. Three commenters agreed with the proposal as circulated, four agreed and suggested modifications, one (TEXCOM)

indicated no position but remained concerned, and one, CJA, did not agree. A chart with the full text of all comments received in winter 2019 and the committee's responses is attached at pages 28–48. The comments were again split between a majority that argued the requirements were too rigorous and would discourage attorneys from qualifying and making themselves available for appointment and a minority that argued the requirements were insufficient to ensure that appointed attorneys would be qualified to represent their clients effectively. Many of the committee's decisions discussed above regarding the recommended rules were made in response to issues raised in public comment. Additional responses to comments are discussed below.

Several commenters expressed concern that the education requirements would be too burdensome on attorneys. TEXCOM, in particular, suggested reducing the hours of required annual education to three for eligibility in one field and four—two in each—for eligibility in both fields. The committee does not recommend reducing these requirements any further. The knowledge required to represent a minor child in a guardianship proceeding is sufficiently distinct from the knowledge required to represent an adult in a conservatorship or capacity proceeding that separate education requirements covering distinct subject matter are appropriate. Three hours seem to be the minimum time required to cover each set of subjects in sufficient depth. The committee does not view six hours of education per year to be excessively burdensome for attorneys who want to be eligible for appointment to represent wards and conservatees.

The committee recognizes that education meeting the subject matter requirements may be difficult to find. The committee has reduced the number of required subjects while keeping them focused on guardianships or conservatorships as required by statute, and has authorized delivery of qualifying education through any distance learning method approved by the State Bar. Finally, to increase the statewide availability of education that allows attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable webinars and other online courses that will be available, at no cost, in time to permit their completion by January 1, 2021, the first deadline to complete annual education under these rules.

Two commenters expressed concern that the alternative qualifications in rules 7.1102(b) and 7.1103(b)—which, as circulated, required an inexperienced attorney to be "supervised by" an experienced attorney as a condition of qualification for appointment—would, in conjunction with rule 5.1(c)(2) of the Rules of Professional Conduct, impose a duty on the experienced attorney to remedy a known ethical violation by the inexperienced attorney.[8] The committee agrees that the requirement as circulated could have been interpreted to require the experienced attorney to have "direct supervisory authority" over the inexperienced attorney and, therefore, a duty to remedy a known ethical violation. The committee does not intend to require the experienced attorney to assume that duty as a condition of the inexperienced attorney's qualification for appointment

[8] See Rules Prof. Conduct, rule 5.1(c): "A lawyer shall be responsible for another lawyer's violation of these rules and the State Bar Act if: … (2) the lawyer … has *direct supervisory authority* over the other lawyer, whether or not a member or employee of the same law firm,* *and knows** of the conduct at a time when its consequences can be avoided or mitigated *but fails to take reasonable* remedial action."* (Italics added.)

under rule 7.1102(b) or 7.1103(b). To clarify this intent, the committee has revised the rules to allow an inexperienced attorney to meet the alternative qualifications in part by working in close professional consultation with *or* under the supervision of an experienced attorney. The committee intends "working in close professional consultation" to describe a professional relationship in which the inexperienced attorney receives the benefit of the experienced attorney's knowledge and skills and applies them to provide effective representation.[9] Consulting attorneys may wish to make clear from the outset the scope and limits of their relationship to avoid unanticipated ethical issues.

In response to the committee's request for specific comment, two commenters suggested expanding the authority to appoint an attorney who does not meet the qualifications and annual education requirements in the rules. The committee agrees that the exception to the requirement to appoint only qualified attorneys, currently available only to courts with four or fewer authorized judges, should be expanded to apply to all courts. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of an exception. The existing rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in the court and is therefore somewhat arbitrary. Reported data for court filings appear to vary in completeness among courts, so an exception based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise in any court in which it may be necessary to appoint an attorney who is not certified under these rules but who has other special qualifications needed to serve the interests of a specific client. The committee has therefore modified its recommendation to authorize a court of any size to appoint an attorney who has not met the qualifications or annual education requirements in rule 7.1102 or 7.1103 on an express finding of necessity, which may include the lack of available qualified counsel or the need for special skills to serve a client's interests.

Alternatives considered

The committee considered not amending rule 7.1101. However, committee members, courts, and stakeholders across the state reported inconsistent and sometimes inadequate experience and education of counsel appointed under sections 1470 and 1471. In addition, the committee determined that the existing rule's authorization of experience and education in general estate planning and probate law was not fully consistent with the statute's express requirements regarding conservatorships and guardianships.

The committee considered amending rule 7.1101 as a single rule and circulated proposed amendments for public comment in spring 2018. In response to the wide range of opinion reflected in the comments received, some of which was based on a lack of clarity in the circulated rule, the committee divided the rule into several rules, each serving a specific purpose.

[9] For the inexperienced attorney to meet the alternative qualifications, the experienced attorney may, but need not, have direct supervisory authority over the inexperienced attorney. Whether the experienced attorney has that authority and the resulting duty to remedy a known ethical violation by the inexperienced attorney is a question of fact independent of whether the inexperienced attorney is qualified under these rules.

The comments generally approved of the division of the rules, but also reflected some misunderstandings based on continued complexity and lack of clarity. In response, the committee simplified the rules by restructuring them, reducing the complexity of some requirements, and addressing the ambiguity in others.

The committee also proposed or considered proposing several rule amendments that are not included in this final recommendation. First, the committee considered proposing a separate rule applying only to representation in limited conservatorships, but decided to address limited conservatorships with all probate conservatorships in rule 7.1103. This approach aligns with the structure of the Probate Code, which integrates limited conservatorships into its conservatorship provisions to the extent of authorizing the court to appoint a conservator or a limited conservator if a proposed limited conservatee lacks the capacity to perform all of the tasks necessary to provide properly for personal needs or manage finances. (Prob. Code, § 1828.5(d).)

Second, the committee considered whether to specify the role and duties of an attorney appointed by the court under section 1470 or 1471. However, it is generally 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 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 represents "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 annual 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 specifies—or invites the council to specify—the role and duties of appointed counsel. The committee has therefore declined to specify those duties in the proposed rules.

Third, the committee proposed requiring an attorney to complete initial education, in addition to experience, to qualify for appointment. In response to comments, and recognizing that such a requirement would be a significant change from the existing rule that would leave many appointed attorneys no longer qualified, the committee removed that requirement from its recommendation. The committee also considered several different types and configurations of experience-based qualifications, especially related to conservatorships, but ultimately decided that experience representing any three parties in separate probate or LPS conservatorships or protective proceedings, including one contested matter or trial, would be adequate to enable an attorney to provide effective representation.

Fiscal and Operational Impacts

The recommendation should lead to more qualified attorneys available for appointment under sections 1470 and 1471. Although the amendments have eliminated some options for qualification, such as completion of estate planning documents, they have given more weight to

other qualifications, such as experience representing petitioners or objectors in conservatorship proceedings, and authorized alternative qualifications. The amended annual education hours and subject matter will impose a small burden on attorneys, but this will be alleviated by provision of online qualifying education at no cost through the Judicial Council, and will equip more attorneys with the knowledge they need to represent their clients effectively. The recommended revisions to form GC-010 and revocation of form GC-011 will reduce the time attorneys and courts spend completing and processing forms. The committee believes that the recommendation, taken as a whole, will lead to more counsel qualified for appointment, more effective representation of wards and conservatees, and better-informed judicial determinations.

Attachments and Links

1. Cal. Rules of Court, rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105, at pages 12–24
2. Forms GC-010 and GC-011, at pages 25–27
3. Chart of winter 2019 comments and committee responses, at pages 28–48
4. Attachment A: Chart of spring 2018 comments and updated committee responses [this proposal circulated for comment twice, and the chart from the first comment cycle is provided as background]
5. Attachment B: Table comparing existing requirements with recommended requirements
6. Link A: Prob. Code, § 1456, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1456*
7. Link B: Prob. Code, § 1470, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1470*
8. Link C: Prob. Code, § 1471, *http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PROB&sectionNum=1471*

Rule 7.1101 of the California Rules of Court is repealed, and rules 7.1101, 7.1102, 7.1103, 7.1104, and 7.1105 are adopted, effective January 1, 2020, to read:

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

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

~~(a) Definitions~~

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

~~(1) "Appointed counsel" or "counsel appointed by the court" are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders directly responsible for the performance of legal services under the court's appointment of a county's public defender.~~

~~(2) A "probate guardianship" or "probate conservatorship" is a guardianship or conservatorship proceeding under division 4 of the Probate Code.~~

~~(3) "LPS" and "LPS Act" refer to the Lanterman-Petris-Short Act, Welfare and Institutions Code section 5000 et seq.~~

~~(4) An "LPS conservatorship" is a conservatorship proceeding for a gravely disabled person under chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.~~

~~(5) A "contested matter" in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections are filed by any party or made by the conservatee or proposed conservatee orally in open court.~~

~~(6) "Counsel in private practice" includes attorneys employed by or performing services under contracts with nonprofit organizations.~~

~~(b) Qualifications of appointed counsel in private practice~~

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

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

~~For an appointment to represent a minor in a guardianship:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) Satisfy the experience requirements for private counsel in (b)(1) for appointments in guardianships or (b)(2) for appointments in conservatorships; or~~

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

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

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

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

(d) Transitional provisions on qualifications

(1) Counsel appointed before January 1, 2008, may continue to represent their clients through March 2008, whether or not they are qualified under (b) or (c). After March 2008, through conclusion of these matters, the court may retain or replace appointed counsel who are not qualified under (b) or (c) or may appoint qualified co-counsel to assist them.

(2) In January, February, and March 2008, the court may appoint counsel in new matters who have not filed the certification of qualifications required under (h) at the time of appointment but must replace counsel appointed under this paragraph who have not filed the certificate before April 1, 2008.

(e) Exemption for small courts

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

(2) A court described in (1) may, without a waiver, appoint counsel in private practice who do not satisfy the insurance requirements of (b)(3) if counsel demonstrate to the court that they are adequately self-insured.

(3) A court may not waive or disregard the self-insurance requirements of (c)(2) applicable to deputy public defenders.

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

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

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

~~(2) Counsel qualified to represent minors in guardianships under (b)(1)(B) and who are appointed to represent minors in guardianships of the person only may satisfy the continuing education requirements of this rule by satisfying the annual education and training required under rule 5.242(d) or the continuing education required under rule 5.660(d)(3).~~

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

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

~~(h) Initial certification of qualifications; annual post-qualification reports and certifications~~

~~(1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, including deputy public defenders, must certify to the court in writing before April 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.~~

~~(2) After March 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.~~

~~(3) Each counsel appointed or eligible for appointment by the court under this rule must immediately advise the court of the imposition of any State Bar discipline.~~

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

~~(A) His or her history of State Bar discipline and professional liability insurance coverage or, if appointed by a court with four or fewer authorized judges under (e)(2), the adequacy of his or her self-~~

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

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

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

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

~~(i) Reporting~~

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

Rule 7.1101. Scope, definitions, and general qualifications

(a) Scope (Prob. Code, §§ 1456, 1470–1471)

The rules in this chapter establish minimum qualifications, annual education requirements, and certification requirements that an attorney must meet as conditions of court appointment as counsel under Probate Code section 1470 or 1471 in a proceeding under division 4 of that code.

(1) The rules in this chapter apply to an appointed attorney regardless of whether the attorney is a sole practitioner or works for a private law firm, a legal services organization, or a public defender's office.

(2) The rules in this chapter do not apply to:

(A) Retained counsel;

(B) Counsel appointed under the authority of any law other than Probate Code section 1470 or 1471.

(b) Definitions

For purposes of this chapter, the following terms are used as defined below:

(1) "Appointed counsel" or "appointed attorney" means an attorney appointed by the court under Probate Code section 1470 or 1471 who assumes direct personal responsibility for representing a ward or proposed ward, a conservatee or proposed conservatee, or a person alleged to lack legal capacity in a proceeding under division 4 of the Probate Code.

(2) "Probate guardianship" means any proceeding related to a general or temporary guardianship under division 4 of the Probate Code.

(3) "Probate conservatorship" means any proceeding related to a conservatorship or limited conservatorship, general or temporary, under division 4 of the Probate Code.

(4) "LPS Act" refers to the Lanterman-Petris-Short Act (Welf. & Inst. Code, §§ 5000–5556), which provides for involuntary mental health treatment and conservatorship for persons who are gravely disabled as the result of a mental health disorder.

(5) A "contested matter" is a matter that requires a noticed hearing and in which an objection is filed in writing or made orally in open court by any person entitled to appear at the hearing and support or oppose the petition.

(6) "Trial" means the determination of one or more disputed issues of fact by means of an evidentiary hearing.

(c) General qualifications

To qualify for any appointment under Probate Code section 1470 or 1471, an attorney must:

(1) Be an active member in good standing of the State Bar of California or a registered legal aid attorney qualified to practice law in California under rule 9.45;

(2) Have had no professional discipline imposed in the 12 months immediately preceding the date of submitting any initial or annual certification of compliance; and

(3) Have demonstrated to the court that the attorney or the attorney's firm or employer:

(A) Is covered by professional liability insurance with coverage limits no less than $100,000 per claim and $300,000 per year; or

(B) Is covered for professional liability at an equivalent level through a self-insurance program;

(4) Have met the applicable qualifications and annual education requirements in this chapter and have a current certification on file with the appointing court; and

(5) Have satisfied any additional requirements established by local rule.

(d) Local rules

The rules in this chapter establish minimum qualifications and requirements. Nothing in this chapter prohibits a court from establishing, by local rule adopted under rule 10.613, additional or more rigorous qualifications or requirements.

(e) Retroactivity

The amendments to this chapter adopted effective January 1, 2020, are not retroactive. They do not require an attorney who submitted an initial certification of qualifications under this chapter as it read on or before December 31, 2019, to submit a new initial certification.

Rule 7.1102. Qualifications and annual education required for counsel appointed to represent a ward or proposed ward (Prob. Code, §§ 1456, 1470(a))

Except as provided in rule 7.1104(b), an attorney appointed for a ward or proposed ward must have met the qualifications in either (a) or (b) and, in every calendar year after first availability for appointment, must meet the annual education requirements in (c).

(a) Experience-based qualifications

An attorney is qualified for appointment if the attorney has met the experience requirements described in either (1) or (2).

(1) Within the five years immediately before first availability for appointment, the attorney has personally represented a petitioner, an objector, a respondent, a minor child, or a nonminor dependent in at least three of any combination of the following proceedings, at least one of which must have been a contested matter or trial:

(A) A probate guardianship proceeding;

(B) A juvenile court child welfare proceeding; or

(C) A family law child custody proceeding.

(2) At the time of first availability for appointment, the attorney meets the experience requirements:

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

(B) In rule 5.242(f) for appointment to represent a minor child in a family law child custody proceeding.

(b) Alternative qualifications

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

(1) At the time of appointment, the attorney works for an attorney, a private law firm, or a legal services organization approved by the court for appointment under Probate Code section 1470 to represent wards or proposed wards, and the attorney is supervised by or working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a); or

(2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d) and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

(c) Annual education

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a ward or proposed ward must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

(d) Subject matter and delivery of education

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

(1) State and federal statutes—including the federal Indian Child Welfare Act of 1978 (25 U.S.C. §§ 1901–1963)—rules of court, and case law governing probate guardianship proceedings and the legal rights of parents and children;

(2) Child development, including techniques for communicating with a child client; and

(3) Risk factors for child abuse and neglect and family violence.

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

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

(a) Experience-based qualifications

An attorney is qualified for appointment if, within the five years immediately preceding first availability for appointment, the attorney has personally represented a petitioner, an objector, a conservatee or proposed conservatee, or a person alleged to lack legal capacity or be gravely disabled in at least three separate proceedings under either division 4 of the Probate Code or the LPS Act, including at least one contested matter or trial.

(b) Alternative qualifications

An attorney who does not yet meet the experience-based qualifications in (a) may, until the attorney has gained the necessary experience, qualify for appointment if the attorney meets the requirements in (1) or (2).

(1) At the time of appointment, the attorney works for an attorney, a private law firm, a public defender's office, or a legal services organization (including

the organization designated by the Governor as the state protection and advocacy agency, as defined in section 4900(i) of the Welfare and Institutions Code) approved by the court for appointment to represent conservatees, proposed conservatees, and persons alleged to lack legal capacity, and the attorney is supervised by or working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a); or

(2) In the 12 months immediately before first availability for appointment, the attorney has completed at least three hours of professional education approved by the State Bar of California for Minimum Continuing Legal Education (MCLE) credit in the subjects listed in (d), and, at the time of appointment, the attorney is working in close professional consultation with a qualified attorney who has satisfied the experience requirements in (a).

(c) Annual education

Each calendar year after first availability for appointment, an attorney appointed by the court to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity must complete at least three hours of professional education approved by the State Bar for MCLE credit in the subjects listed in (d).

(d) Subject matter and delivery of education

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

(1) State and federal statutes—including the federal Americans with Disabilities Act (42 U.S.C. §§ 12101–12213)—rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities;

(2) The attorney-client relationship and lawyer's ethical duties to a client under the California Rules of Professional Conduct and other applicable law; and

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

(A) Communicating with an older client or a client with a disability;

(B) Vulnerability of older adults and persons with disabilities to undue influence, physical and financial abuse, and neglect;

(C) Effects of aging, major neurocognitive disorders (including dementia), and intellectual and developmental disabilities on a person's ability to perform the activities of daily living; and

(D) Less-restrictive alternatives to conservatorship, including supported decisionmaking.

Rule 7.1104. Local administration

(a) Procedures

(1) A local court may create and maintain lists or panels of certified attorneys or approve the public defender's office and one or more legal services organizations to provide qualified attorneys for appointment under Probate Code sections 1470 and 1471 to represent specific categories of persons in proceedings under division 4 of that code.

(2) A court may establish, by local rule adopted under rule 10.613, procedural requirements, including submission of an application, as conditions for approval for appointment or placement on a list or panel.

(b) Exception to qualifications

A court may appoint an attorney who is not qualified under rule 7.1102 or 7.1103 on an express finding, on the record or in writing, of circumstances that make such an appointment necessary. These circumstances may include, but are not limited to, when:

(1) No qualified attorney is available for appointment; or

(2) The needs or interests of the person to be represented cannot be served without the appointment of an attorney who has other specific knowledge, skills, or experience.

Rule 7.1105. Certification of attorney qualifications

(a) Initial certification

Before first availability for appointment under Probate Code section 1470 or 1471, an attorney must certify to the court that the attorney:

(1) Meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and

(2) Meets the qualifications in rule 7.1102 for appointment to represent wards or the qualifications in rule 7.1103 for appointment to represent conservatees, or both, depending on the appointments the attorney wishes to be available for.

(b) Annual certification

To remain eligible for appointment under Probate Code section 1470 or 1471, an attorney who has submitted an initial certification must certify to the court, no later than March 31 of each following year, that:

(1) The attorney meets the licensing, disciplinary status, and insurance requirements in rule 7.1101(c)(1)–(3); and

(2) The attorney has completed the applicable annual education—in rule 7.1102, 7.1103, or both—required for the previous calendar year.

(c) Notification of disciplinary action

An appointed attorney must notify the court in writing within five court days of any disciplinary action taken against the attorney by the State Bar of California. The notification must describe the charges, disposition, and terms of any reproof, probation, or suspension.

(d) Documentation

A court to which an attorney has submitted a certification under this rule may require the attorney to submit documentation or other information in support of any statement in the certification.

(e) Confidentiality

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

ATTORNEY	STATE BAR NUMBER:		DO NOT FILE OR LODGE IN CASE FILE
NAME:			
FIRM NAME:			
STREET ADDRESS:			
CITY:	STATE:	ZIP CODE:	
TELEPHONE NO.:	FAX NO.:		
EMAIL ADDRESS:			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF			
STREET ADDRESS:			
MAILING ADDRESS:			
CITY AND ZIP CODE:			
BRANCH NAME:			

CERTIFICATION OF ATTORNEY QUALIFICATIONS

☐ **INITIAL** ☐ **ANNUAL**

INSTRUCTIONS

1. **INITIAL:** Before a court may appoint you as counsel for the first time under Probate Code section 1470 or 1471, you must complete items 1, 2, and 3; complete item 4 for appointment to represent a ward or proposed ward; complete item 5 for appointment to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity; provide any additional required information in item 7; sign the form at the bottom of page 2; and submit the form to the appointing court.
2. **ANNUAL:** To remain eligible for appointment, before March 31 of each calendar year following initial certification you must complete items 1, 2, 3, and 6; provide any additional required information, including an explanation of any unsatisfied requirements, in item 7; sign the form at the bottom of page 2; and submit the form to the appointing court.

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

LICENSING AND DISCIPLINE

1. a. ☐ I am an active member in good standing of the State Bar of California. *(Date of admission):*

   OR

   b. ☐ I am a registered legal aid attorney qualified to practice law in California under rule 9.45 of the California Rules of Court. *(Date of special admission):*

2. ☐ I have had no professional discipline imposed in the 12 months immediately preceding the execution of this form.

INSURANCE

3. a. ☐ I am covered by professional liability insurance with limits no lower than $100,000 per claim and $300,000 per year or any higher limits required by local rule, if applicable.
   My insurer is *(specify name, address, phone number, and email address):*

   OR

   b. ☐ I am covered against professional liability at a level not lower than that in a. by a self-insurance program through my firm, employer, or government agency. *(Describe self-insurance in item 7.)*

INITIAL QUALIFICATIONS

Guardianship

4. ☐ I am qualified for appointment under Probate Code section 1470 to represent a ward or proposed ward because I have met at least one of the requirements in rule 7.1102(a) or (b) and, if applicable, all additional requirements imposed by local rule. *(Describe qualifying experience, work arrangements, or education in item 7.)*

Conservatorship and Capacity Determination

5. ☐ I am qualified for appointment under Probate Code section 1470 or 1471 to represent a conservatee, proposed conservatee, or person alleged to lack legal capacity because I have met at least one of the requirements in rule 7.1103(a) or (b) and, if applicable, all additional requirements imposed by local rule. *(Describe qualifying experience, work arrangements, or education in item 7.)*

ANNUAL EDUCATION

6. ☐ I have completed the annual education requirements in ☐ rule 7.1102(c) ☐ rule 7.1103(c) and ☐ all additional education or training requirements imposed by local rule of court for the previous calendar year.
   (List the hours and applicable subjects of completed education in item 7.)

Additional space provided and signature required on page 2.

Form Approved for Optional Use
Judicial Council of California
GC-010 [Rev. January 1, 2020]

Probate Code, §§ 1456, 1470, 1471;
Cal. Rules of Court, rules 7.1101–7.1105
www.courts.ca.gov

CERTIFICATION OF *(name):* , ATTORNEY	STATE BAR NUMBER:

7. ☐ Provide any additional required information, including an explanation of any unsatisfied requirements, below.

☐ Continued on Attachment 7.

I declare under penalty of perjury under the laws of the State of California that the foregoing statements, including the statements in any document attached to or submitted with this form, are true and correct.

Date:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY) (SIGNATURE)

CONFIDENTIAL—FOR COURT USE ONLY

GC-011

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF

STREET ADDRESS:

MAILING ADDRESS:

CITY AND ZIP CODE:

(Do not file or lodge in case file)

CERTIFYING ATTORNEY State Bar No.:

(Name):

ANNUAL CERTIFICATION OF COURT-APPOINTED ATTORNEY

NOTICE TO ATTORNEYS APPOINTED BY THE COURT IN PROBATE CONSERVATORSHIPS OR GUARDIANSHIPS

1. Beginning in 2008, you must complete three hours of continuing education each calendar year that qualifies for Minimum Continuing Legal Education (MCLE) credit for California State Bar–certified specialists in estate planning, trust, and probate law. (See Cal. Rules of Court, rule 7.1101(f).)
2. Beginning in 2009, you must certify to the court before the end of March of each year that (1) you completed the required continuing education during the previous calendar year, and (2) your State Bar disciplinary history and professional liability insurance or self-insurance coverage either have or have not changed since your qualification certification or last annual certification was filed. You must also describe any changes in your disciplinary history and insurance or self-insurance coverage. (See rule 7.1101(h)(4) and (5).)

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

1. a. ☐ I have had no State Bar discipline imposed since the date of my qualification certification or my last annual certification.
   b. ☐ I have had State Bar discipline imposed since the date of my qualification certification or my last annual certification. The circumstances are described in Attachment 1b.
2. a. ☐ My professional liability insurance coverage (rule 7.1101(b)(3)), adequacy of self-insurance (rule 7.1101(e)(2)), or self-insurance program coverage (rule 7.1101(c)(2)) has not changed since the date of my qualification certification or my last annual certification.
   b. ☐ My professional liability insurance, adequacy of self-insurance, or self-insurance program coverage has changed since the date of my qualification certification or my last continuing education certification. My current circumstances are described in Attachment 2b.
3. My contact information is ☐ as stated in my qualification certification or last annual certification. ☐ as follows:
   a. Firm or employer name:
   b. Address:
   c. Telephone number: d. Fax number:
   e. E-mail address:
4. During calendar year _____, I completed a total of *(specify):* _____ hours of continuing education that qualifies for MCLE credit for State Bar-certified specialists in estate planning, trust, and probate law, as follows:

Provider	Subject	Hours
		_____
		_____
		_____

I certify that the foregoing is true and correct. Total hours: _____

Dated:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY) (SIGNATURE)

Form Adopted for Mandatory Use
Judicial Council of California
GC-011 [New January 1, 2009]

ANNUAL CERTIFICATION OF COURT-APPOINTED ATTORNEY
(Probate—Guardianships and Conservatorships)

Probate Code, §§ 1456, 1470, 1471;
Cal. Rules of Court, rule 7.1101
www.courtinfo.ca.gov

W19-08

Probate Guardianship and Conservatorship: Qualifications and Education of Appointed Counsel (adopt Cal. Rules of Court, rules 7.1101–7.1105; repeal rule 7.1101; revise form GC-010; and revoke form GC-011)

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

	Commenter	Position	Comment	Committee Response
1.	California Judges Association Probate Committee by Erinn Ryberg, Legislative Director	N	The Committee members are very concerned about changing the current qualification rules in a way that make it more difficult to attract attorneys to serve on the panel of Court Appointed Attorneys (CAAs). The committee members noted that CAAs generally are compensated by their respective counties at a fraction of their usual hourly rate. In some counties, they have to make long drives to meet with their clients. They are obliged to take mandatory training, which can be expensive. Even under the existing requirements, it is a continuing struggle to have sufficient numbers of attorneys on the panels.	The committee appreciates CJA's comments. The committee appears to agree with CJA on the significant policy issues raised in the comments. The committee does not intend to make it more difficult overall to qualify for appointment under sections 1470 and 1471. The committee's goal in the proposed rules is to tailor the requirements better to comply with the mandates in section 1456 to establish qualifications and annual education related to conservatorships and guardianships, to modify the rule to focus on the qualifications and education most needed by attorneys appointed under sections 1470 and 1471, and to present the requirements more clearly than in the existing rule.
			The Committee was also concerned about attracting and retaining foreign-language attorneys to serve as CAAs.	The committee supports efforts to attract attorneys who speak languages other than English to increase access to the courts for persons with limited English proficiency. Though addressing this issue is largely beyond the scope of this proposal, the committee has modified its recommendation to authorize a court to appoint an attorney who is not certified or on its list or panel if necessary to serve the client's special needs and interests, which may include language access.
			The Committee agrees that training of CAAs is desirable, but the proposal does not improve on the present situation, in which training is conducted by the counties ad hoc. Some counties have bar groups individually lack the resources to put on an annual training program	The committee believes that, under section 1456(a)(3), training is not only desirable, but required. The committee shares CJA's concern that ad hoc training on a county-by-county basis is insufficient to ensure a consistently high level of representation across the state. To address this

	Commenter	Position	Comment	Committee Response
			that present the training as a service to the court. The courts individually lack the resources to put on an annual training program. Generally, the Committee is in favor of doing whatever it can do to make taking on these cases more attractive to the many qualified lawyers who might be willing to take on these cases, especially given the low level of compensation.	issue, the committee has proposed amendments to clarify that attorneys may apply education delivered by any State Bar–approved distance learning method to satisfy the chapter's education requirements. To increase the statewide availability of education that allows attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow their completion before January 1, 2021.
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	The JRS notes that some courts have struggled with the adequacy of representation for limited conservatees, particularly when private counsel in appointed. The amount of training/experience of some appointed counsel has been insufficient, thereby impacting the limited conservatees. Several opinions have been published in the various legal newspapers that are critical of how conservatorships are handled throughout the state. The Probate and Mental Health Advisory Committee (PMHAC) spent extensive time examining the current rules to develop the proposed changes contained herein that would address the necessary training/experience for appointed counsel.	The committee appreciates the JRS's comments. The committee intends the amendments to these rules to improve the quality of representation by attorneys appointed under sections 1470 and 1471. Although the recommendation increases the amount of annual education required somewhat, it is intended more to ensure that appointed attorneys have experience and education relevant to the knowledge and skills attorneys they need to provide effective representation for minors, conservatees, and persons alleged to lack legal capacity.
3.	William Lenehan Deputy Public Defender Office of the Ventura County Public Defender	AM	First I want to commend the committee on its efforts to fix the requirements and the forms. [I]t is very difficult to find educational opportunities (CLE) that are probate conservatorship, LPS conservatorship and/or guardianship specific. Therefore, narrowing the qualifying educational and/or practice requirements may be overly burdensome.	The committee appreciates Mr. Lenehan's comments. To increase the statewide availability of education that allow attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow their completion before January 1, 2021.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Further, I think the committee should take into account the uniqueness that the public defenders offices present. Specifically: 1) that they perform much of this type of work in our state; 2) that they rotate their attorneys; and 3) that they typically have numerous attorneys to supervise and answer questions of less experienced attorneys. As such, I would suggest treating them differently. Specifically, that the education and practice requirements be waived (or reduced) as long as the attorney is on a team with or being supervised by a fully qualifying attorney.	The committee recognizes and appreciates the conservatorship defense work performed by public defenders across California. Rule 7.1103(b)(1) and its counterpart for guardianships, rule 7.1102(b)(1), seek to account for frequent rotation of attorneys by allowing an attorney to qualify for appointment if the attorney works for a public defender's office or a legal services organization approved by the court and is supervised by *or* works in close consultation with an attorney who has met the experience-based qualifications.
4.	Orange County Bar Association by Deirdre Kelly, President Newport Beach	A	OCBA is concerned that the proposed qualifications and education requirements will discourage individuals from serving as court appointed counsel, especially given the low hourly rates paid. The Courts need these individuals to serve and there are serious concerns the pool of counsel available for appointment will diminish significantly if these qualifications and education requirements are implemented. ***1. Does the proposal appropriately address the stated purpose?*** Yes ***2. Should proposed rules 7.1102(b)(1)(B) and 7.1103(b)(1)(B) specify minimum amounts of professional liability insurance coverage?*** Yes ***3. 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?*** Yes	The committee recognizes the bar association's concern, and does not intend to discourage individual attorneys from making themselves available for appointment under Probate Code sections 1470 and 1471. The recommended qualifications and annual education requirements reflect the committee's determination of the minimum needed to ensure adequate representation by appointed counsel. No response required. The committee agrees with the comment and has amended the rules to specify minimum coverage limits. The committee agrees and has amended rule 7.1101(c) to authorize appointment of a registered legal-aid attorney qualified to practice law in California under rule 9.45 who meets the other requirements in the rules.

	Commenter	Position	Comment	Committee Response
			4. 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 County of Orange is not a small court and thus we have no comment.	No response required.
5.	Probate Attorneys of San Diego (PASD) by Hilary Vrem, President	AM	It is our opinion that should the proposed rules be enacted as currently written, San Diego will face the challenge of attracting new CAAs but may lose current CAAs who will no longer qualify to serve. **Rule 7.1101(a) and Rule 7.1101(b)(1)** reference to *division 4* of the Probate Code. Division 4 of the Probate Code is too limited because it excludes court appointments made when helpful in proceedings under division 4.5 (power of attorney), division 4.7 (health care decisions), division 7 (estates) or division 9 (trusts) of the Probate Code ***Suggested Language:*** *"…or person alleged to lack legal capacity in a proceeding under ~~division 4~~ of the Probate Code."* **Rule 7.1101(b)(2)** states "counsel of record" means an attorney who assumed personal responsibility for the performance of legal services for a client in a judicial proceeding under California law, regardless of whether:. . ." This definition applies to all judicial proceedings conducted in California, whether adjudicated under California law or some other jurisdiction's laws.	The committee does not intend the amended rules to discourage individual attorneys from making themselves available for appointment under Probate Code sections 1470 and 1471 and has modified its recommendation to mitigate the burden on attorneys while maintaining requirements sufficient to promote effective representation by appointed counsel. The committee does not recommend the suggested change. The rules in this proposal respond to the mandate in Probate Code section 1456(a), which directs the Judicial Council to adopt rules that specify the qualifications and annual education requirements for attorneys appointed under sections 1470 and 1471 of that code. Sections 1470 and 1471, in turn, authorize or mandate appointment of counsel only in proceedings under division 4 of the code. Appointments authorized by other statutory provisions or in proceedings outside division 4 are beyond the scope of this proposal. The committee has removed the term "counsel of record" and its definition from the proposed rules. No further response is necessary.

	Commenter	Position	Comment	Committee Response
			Suggested Language: *"...performance of legal services for a client in a judicial proceeding under in California laws, regardless of whether:"* **Rule 7.1101(b)(3)** Definition is too specific and potentially eliminates appointments related to guardianships for proceedings others other than the four listed. ***Suggested Language:*** *"Probate guardianship" means any proceeding related to ~~the establishment, supervision, modification, or termination of~~ a general or temporary guardianship under division 4 of the Probate Code, including but not limited to the establishment, supervision, modification, or termination of a guardianship.* **Rule 7.1101(b)(4)** Definition is too specific and potentially eliminates appointments related to conservatorships for proceedings others other than the four listed. ***Suggested Language:*** *"Probate conservatorship" means any proceeding related to ~~the establishment, supervision, modification, or termination of~~ a general or temporary conservatorship under division 4 of the Probate Code, including but not limited to the establishment, supervision, modification, or termination of a conservatorship.* **Rule 7.1101(b)(9)** The definition of trial should include the determination of disputed issues of fact or law.	The committee agrees that the limiting language is not needed and has amended the definition in rule 7.1101(b)(3) to remove it. The committee agrees that the limiting language is not needed and has amended the definition in rule 7.1101(b)(4) to remove it. The committee does not recommend the suggested change. The committee does not intend the term

	Commenter	Position	Comment	Committee Response
			Suggested Language: "Trial" means the determination of one or more disputed issues of fact or law by means of an evidentiary hearing.	"trial," as used in these rules, to encompass resolution of issues of law.
			Rule 7.1102(b)(2) states that an attorney's failure to meet the requirements in the new rule 7.1105 is good cause to terminate the attorney's existing appointments and remove the attorney from the panel.	The committee has modified its recommendation to remove the language stating that an attorney's failure to meet the requirements in the rules is good cause to terminate the attorney's appointment and remove the attorney from the panel. The committee nevertheless believes that statement to be accurate as a matter of law.
			PASD believes there should be a grandfather clause to allow attorneys already on the panel prior to the effective date of this new rule to remain on the approved attorney panel. There are currently-qualified attorneys on the panel who may not have the requisite education or experience to re-qualify now. For example, many experienced attorneys may no longer handle trials and they wouldn't be eligible to re-qualify to be on the panel under these new rules. The Court can ill afford to lose the expertise of these attorneys who are already assisting the Court on a regular basis.	The committee has modified its recommendation to add rule 7.1101(e), which makes clear that the amended rules are not retroactive, and that an attorney who has submitted an initial certification of qualifications under the existing rule need not submit a new initial certification under the amended rules to maintain eligibility for appointment. Those attorneys will continue to be eligible for appointment if they continue to meet licensing, disciplinary status, and insurance requirements, complete the annual education requirements, and submit the annual certification under rule 7.1105(b).
			In particular, this rule would adversely affect probate courts with more than four authorized probate judges, as those courts cannot use Rule 7.1104 to make an exception to keep these experienced attorneys on the panel.	Although no exception is needed to keep experienced attorneys on the panel, the committee has modified its recommendation to authorize a court of any size to appoint an attorney who has not met the qualifications in rule 7.1102 or 7.1103 on an express finding of necessity.
			Rule 7.1102(c)(1) states: Within the five years immediately before first accepting appointment after January 1, 2021, the attorney must have represented a petitioner or an objector at the beginning of at least three	The committee agrees and has modified its recommendation to delete the suggested language.

	Commenter	Position	Comment	Committee Response
			probate guardianship proceedings, including at least one contested matter or trial, from initial contact with the client through the conclusion of the hearing on the petition. Delete the language "at the beginning of". This language is ambiguous. Does it mean the attorney must represent an objector when the petition is initially filed? ***Suggested Language:*** Within the five years immediately before first accepting appointment after January 1, 2021, the attorney must have represented a petitioner or an objector ~~at the beginning of~~ in at least three probate guardianship proceedings, including at least one contested matter or trial~~, from initial contact with the client through the conclusion of the hearing on the petition.~~ **Rule 7.1102(c)(2)** requires an attorney to represent a minor before qualifying to be on the attorney panel. This requirement is virtually impossible to meet as the Court only appoints panel attorneys to represent minors, and an attorney can't get on the panel unless the attorney has previously been on the panel and appointed by the Court. ***Suggested Language:*** *Delete Rule 7.1102 (c)(2).*	The committee does not recommend deleting this qualification. Allowing an attorney to qualify to for appointment to represent minors in guardianship proceedings *only* by representing minors on appointment in guardianship proceedings would indeed appear calculated to reduce the size of the pool of eligible attorneys. Yet that is not what the rule requires. An attorney may also meet the child representation experience requirement by representing minors in child welfare or child custody proceedings. And, as the commenter recognizes above, an attorney may also qualify for appointment by representing petitioners or objectors. Finally, an attorney may qualify for appointment simply by virtue of having sufficient experience to qualify under the rules for appointment in child welfare or child custody proceedings.

	Commenter	Position	Comment	Committee Response
			Rule 7.1102(d) By requiring attorneys to meet both (d)(1) and (d)(2) to qualify to be a CAA, Rule 7.1102(d)(1) unnecessarily discriminates against solo practitioners who don't "work for an attorney or for a law firm". This Rule would make more sense if the attorney was only required to meet either (d)(1) or (d)(2).	The committee has modified its recommendation to combine these two alternative qualifications into a single qualification that applies to an attorney who works for a firm or legal services organization. It has also added a separate alternative qualification to allow a sole practitioner or an attorney working for a small firm to qualify for appointment by completing applicable education and working in close consultation with an attorney who has met the experience-based qualifications.
			Furthermore, "supervision" of an attorney raises serious issues as to (a) the supervising attorney's liability for the acts of the supervised attorney;	The committee understands this comment to implicate the requirements of rule 5.1 of the Rules of Professional Conduct, which places a duty on an attorney with direct supervisorial authority over another attorney to take reasonable remedial action to avoid or mitigate the consequences of the other attorney's know ethical violations. In response to this concern, the committee has revised the rule to require *either* close professional consultation *or* supervision of the inexperienced attorney. This change is intended to clarify that the rule does not *require* the experienced attorney to have any supervisory authority over the inexperienced attorney. For more detail, please see the response to TEXCOM's comment below, at pages 46–47.
			(b) issues regarding the attorney-client privilege and the supervised attorney's duty of client confidentiality; and	Regarding the attorney-client privilege, the committee believes that Evidence Code section 912(d) adequately addresses the professional consultation contemplated by the proposed rules by authorizing confidential disclosure of client communications when "reasonably necessary for the accomplishment of the purpose for which the lawyer … was consulted" without that disclosure waiving the privilege.

	Commenter	Position	Comment	Committee Response
			(c) payment of the supervising attorney for work performed. Most of the CAAs are paid by the county so is the County not going to have to pay two attorneys to do this work? ***Suggested Language:*** *(1) Works for an attorney…;* ~~*and*~~ *or* *(2) Is* ~~*supervised*~~ *mentored by an attorney who has personally qualified to be a court appointed attorney* ~~*satisfied the requirements in (c)*~~*.*	Payment of appointed attorneys is provided for by statute and is beyond the scope of this proposal. However, the committee is not aware of any statutory authority for payment of a consulting attorney who is not appointed by the court. Any payment for consultation would appear to be a matter subject to agreement between the attorneys.
			Rule 7.1103(a) refers to division 4 of the Probate Code. Division 4 of the Probate Code is too limited because it excludes court appointments made when helpful in proceedings under division 4.5 (power of attorney), division 4.7 (health care decisions), division 7 (estates) or division 9 (trusts) of the Probate Code ***Suggested Language:*** *"…in a conservatorship, limited conservatorship or other proceeding under* ~~*division 4 of*~~ *the Probate Code."*	The committee does not recommend the suggested change. The rules in this proposal respond to the mandate in Probate Code section 1456(a), which directs the Judicial Council to adopt rules that specify the qualifications and annual education requirements for attorneys appointed under sections 1470 and 1471 of that code. Sections 1470 and 1471, in turn, authorize or mandate appointment of counsel only in proceedings under division 4 of the code. Appointments authorized by other statutory provisions or in proceedings outside division 4 are beyond the scope of this proposal.
			Rule 7.1103(c) should include limited conservatorships and **Rule 7.1103(d)** should be deleted so there isn't a difference in qualification requirements between a general or a limited conservatorship.	The committee agrees with this suggestion and has modified its recommendation accordingly.
			There is the greatest need for attorneys to assist with Limited Conservatorships but it is not likely that an attorney would represent a proposed conservatee, unless the attorney was appointed by the Court.	The committee has amended the definition of "probate conservatorship" in rule 7.1101(b)(3) to expressly include a general or temporary limited conservatorship within its scope.

	Commenter	Position	Comment	Committee Response
			Suggested Language: *"Except as provided in (d), . . .as counsel of record for a limited conservatee, proposed limited conservatee, conservatee, proposed conservatee, or a person alleged to lack. . ."*	
			Rule 7.1103(c)(2) requires the requirements of both (A) and (B) to be met. PASD suggests that only (A) **or** (B) should be required. ***Suggested Language:*** *Within the five years immediately before . . .the attorney must have completed either (A) ~~and~~ or (B) as follows:*	The committee does not recommend the suggested change. However, it has revised rule 7.1103(b) to provide two separate alternative methods of qualifying for appointment. One requires that the attorney work for an attorney, law firm, public defender's office, or legal services organization. The other requires that the attorney have completed three hours of applicable professional education. Both of these methods require working in close consultation with an attorney who has met the experience-based qualifications.
			Rule 7.1103(c)(2)(A) The experience requirements for guardianship and conservatorship appointments should be consistent. There should be no difference between general and limited conservatorships. ***Suggested Language:*** *Represented a petitioner, ~~or~~ an objector to the petition, conservatee, proposed conservatee, limited conservatee, proposed limited conservatee, or person alleged to lack legal capacity in ~~at the beginning of~~ at least three ~~two~~ probate conservatorship proceedings, including at least one contested matter or trial~~, from initial contact with the client through the conclusion of the hearing on the petition.~~*	The committee agrees generally with the suggestion and has incorporated limited conservatorships into the definition of "probate conservatorship" in rule 7.1101(b) so that all references to the latter term include the former. The committee notes, however, that representation of proposed limited conservatees with alleged developmental disabilities requires knowledge of a different, overlapping legal framework and is also likely to raise distinct issues of fact, including which less-restrictive alternatives need to be considered. The committee intends the required annual education to address the crucial differences between general and limited conservatorships.
			Rule 7.1103(c)(2)(B) The Rule should be revised to refer to only LPS conservatorships and should be consistent with conservatorship requirements.	The committee does not recommend limiting this category to experience representing a person in a proceeding under the LPS Act. The committee has

	Commenter	Position	Comment	Committee Response
			Suggested Language: Represented a conservatee, proposed conservatee, or person alleged to lack legal capacity in at least <u>three</u> ~~two~~ separate matters, including at least one contested matter or trial~~, under division 4 of the Probate Code or~~ under the LPS Act.	combined the experience-based qualifications into subdivision (a), allowing an attorney the greatest flexibility to combine different types of experience to acquire the necessary qualifications while ensuring that the experience is applicable to the representation to be undertaken on appointment.
			Rule 7.1103(c)(3) This requirement is virtually impossible to meet as the Court only appoints panel attorneys to represent conservatees, and an attorney can't get on the panel unless the attorney had previously been on the panel and appointed by the Court. ***Suggested Language:*** *Delete this paragraph.*	The committee agrees that a rule that permitted an attorney to qualify for appointment *only* by using experience serving as an appointed attorney would create a "catch-22" situation. But neither the rule that was circulated for comment nor the proposed rule is so limited. First, both the statutes and the rules contemplate that an attorney could acquire qualifying experience when retained to represent a proposed conservatee. Second, the proposed rule authorizes an attorney to qualify with experience representing petitioners and objectors as well as conservatees or proposed conservatees. Third, the rule authorizes an attorney to qualify using alternatives to experience. The committee does not, therefore, recommend the suggested change.
			Rule 7.1103(d) By requiring attorneys to meet both (d)(1) and (d)(2) to qualify to be a CAA, Rule 7.1103(d)(1) unnecessarily discriminates against solo practitioners who don't "work for an attorney or for a law firm". This Rule would make more sense if the attorney was only required to meet either (d)(1) or (d)(2).	The committee agrees that the rule should provide an avenue for sole practitioners to be appointed under sections 1470 and 1471. The committee has addressed this issue by adding a provision to subdivision (b) to allow sole practitioners to qualify for appointment by completing three hours of applicable professional education and working in consultation with an attorney who meets the experience requirements in the rule.
			Furthermore, "supervision" of an attorney raises serious issues as to (a) the supervising attorney's liability for the acts of the supervised attorney; (b) issues regarding the attorney-client	Please see the response to the comment on rule 7.1102(d), above, and the response to TEXCOM's comment below, at pages 46–47.

	Commenter	Position	Comment	Committee Response
			privilege and the supervised attorney's duty of client confidentiality; and (3) payment of the supervising attorney for work performed. ***Suggested Language:*** *(3) Works for an attorney…; ~~and~~ or* *(4) Is supervised mentored by an attorney who has personally qualified to be a court appointed attorney ~~satisfied the requirements in (c).~~*	
			Rule 7.1103(e) This rule should include limited conservatees. ***Suggested Language:*** *"To accept initial appointment under Probate Code section 1470 and 1471 to represent a conservatee, proposed conservatee, limited conservatee, proposed limited conservatee, or person alleged to lack capacity . . ."*	The committee intends the rule to apply to representation of limited conservatees, but does not recommend the suggested change. The language in the rule tracks the general language in sections 1456, 1470, and 1471, which applies to limited conservatees. In addition, rule 7.1101(b)(3) defines a probate conservatorship to include a limited conservatorship.
			Rule 7.1104(a) This Rule discriminates against large courts (courts with more than four authorized probate judges) by only allowing small courts to waive the appointment requirements. PASD is unclear whether a "small court" is comprised of four judicial officers or four probate judges. This should be clarified so the courts are clear when they can invoke a waiver. ***Suggested Language:*** *A probate court ~~with four or fewer authorized judges~~ may waive any of the requirements. . .*	The committee agrees that the exception to the requirement to appoint only qualified attorneys should be expanded to apply to all courts, no matter their size. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of these rules. The current rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in those courts and is therefore somewhat arbitrary. Reported data for filings appear to vary in completeness from court to court, so an exemption based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise in any court in which it may be necessary to appoint an attorney who is not certified under these rules but

	Commenter	Position	Comment	Committee Response
				who has other special qualifications to meet the needs or interests of a specific client. The committee has therefore modified its recommendation to authorize a court to appoint a an attorney who has not met the qualifications and annual education requirements in rule 7.1102 or 7.1103 on an express finding of necessity, which may include the lack of available qualified counsel or the need for special skills to serve a client's interests.
			Rule 7.1104(b) This Rule is too onerous on the Probate Courts and requires a court to make express written findings when exercising a Rule 7.1104(a) waiver. It may also improperly invade a court's thought process or require the disclosure of confidential information.	The committee does not recommend the suggested change. The probate courts have been required to make express written findings since 2008, when rule 7.1101 took effect. Nevertheless, to reduce the burden on the court without diminishing the importance of the findings, the committee has replaced the requirement of written findings with a requirement to make express findings either in writing or orally on the record.
			Rule 7.1105(a) This Rule is internally inconsistent and ambiguous as written. An attorney appointed using a rule 7.1104 waiver may not be able to certify that he or she meets all the requirements in rules 7.1102(b)–(c) or 7.1103(b)–(c). Paragraph 6 of the form GC-010 adequately provides appropriate language for attorney certification, including an attorney appointed under a 7.1104 waiver. ***Suggested Language:*** *Unless appointed under rule 7.1104, before accepting an appointment under Probate Code section 1470 or 1471 after January 1, 2021, an attorney must certify on form GC-010 that the attorney meets the requirements to be appointed by the court.* ~~*in rule 7.1102(b) or 7.1103(b) and, unless appointed under rule 7.1104, all applicable*~~	The committee agrees that the rule was misleading and has modified its recommendation to require all attorneys who wish to be available for appointment to certify each year that they meet the licensing, disciplinary history, and professional liability coverage requirements in rule 7.1101(c)(1)–(3). An attorney appointed under the exception authorized by rule 7.1104(b) may certify ad hoc that they meet the licensing, disciplinary history, and liability coverage requirements.

	Commenter	Position	Comment	Committee Response
			~~*requirements in rule 7.1102(c)(e), rule 7.1103 (c) (e), or both.*~~	
6.	Spectrum Institute by Thomas F. Coleman Palm Springs	A	Attorneys appointed to represent seniors and people with disabilities in probate conservatorship proceedings have special challenges because their clients have special needs. In some places in California, such as Sacramento, the superior court does not even appoint an attorney to represent a significant number of conservatees or proposed conservatees. Some of these litigants must represent themselves. Obviously, improved training of attorneys will not help these involuntary litigants because they do not have an attorney. In other places, like Los Angeles, the court appoints private counsel. The court operates a PVP legal services program. It farms out the training to the local bar association. We have monitored these trainings and have found them sorely lacking. Hopefully, when these new rules go into effect, the training program will improve. But there is no guarantee unless the State Bar requires pre-clearance of the content before it approves MCLE credits for these trainings. The local bar cannot be counted on to conduct good trainings without monitoring from the State Bar or some other outside entity. In places where the public defender is appointed, such as Alameda County, the PD's office does not have a training program or performance standards. So this is another problem that needs to be addressed.	The committee appreciates Spectrum Institute's comments. The specific issues raised by the comments are beyond the scope of this proposal. No further response is required.

	Commenter	Position	Comment	Committee Response
			To our knowledge, no court-appointed attorney program in California has performance standards or monitoring of the quality of services. This is yet another problem that needs to be dealt with. Having said all of this, it is time to move forward with these proposals. They are an improvement over what exists now. The time for study has ended. It is time to implement the new rules and take this to the next level. Courts and court-appointed attorneys—whether public defenders or private counsel—have obligations under the Americans with Disabilities Act to ensure that seniors and people with disabilities have effective communication and meaningful participation in probate conservatorship proceedings. This should not be left to chance. Adopting these new mandatory educational requirements is a step forward, but still falls short of ensuring compliance with the ADA. Hopefully, the Judicial Council will adopt [these rules] soon. Then the real work begins for the bench and bar to make sure the spirit of these proposals gets translated into effective legal services for clients in conservatorship proceedings.	
7.	Superior Court of Riverside County by Susan Ryan, Chief Deputy of Legal Services	AM	We believe the requirements for representing conservatees are too onerous and should be revised in a way similar to what has been provided for counsel for wards. For wards, counsel can qualify by experience in three cases representing either the minor child or "a petitioner or an objector." One of the cases must be a contested matter or trial.	The committee agrees generally with the comment and has modified its recommendation to allow counsel to qualify for appointment to represent the interests of conservatees et al. by representing three petitioners, objectors, or persons alleged to be gravely disabled as well as conservatees, proposed conservatees, or persons alleged to lack legal capacity.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			For conservatorship, counsel can qualify by either (1) three cases representing conservatees with at least one contested matter or trial, or (2) a combination of two cases representing conservatees and two cases representing petitioners / objectors with at least one of each being a contested matter or trial. It is our recommendation that we mirror the requirements for wards in the requirements for conservatees. For either wards or conservatees, it is nearly impossible to represent them without being court-appointed. Thus, requiring someone to have previously represented conservatees in order to be qualified to represent conservatees does not provide a path for new attorneys to become qualified. There is a new "alternative experience requirement" for both wards or conservatees that allows someone who works for "an attorney, a private law firm, a qualifying legal services provider, or a government agency" that does meet the experience requirements and is supervised by an attorney who qualifies to qualify. This is helpful. But, we do not believe that working for someone who qualifies should be the only means of becoming qualified to represent conservatees. There should be a path to qualify by representing petitioners or objectors alone, like there is for wards. This would allow solo practitioners a reasonable path to qualify. We believe that experience representing petitioners or objectors is at least as valuable, if not more valuable, than working under the supervision an attorney who qualifies under the rule.	

	Commenter	Position	Comment	Committee Response
8.	Superior Court of San Diego County by Mike Roddy, Executive Officer	AM	Q: Does the proposal appropriately address the stated purpose? ***Yes.***	The Committee appreciates the court's comments. Responses to specific comments are provided below.
			Q: 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? ***Given the Legislature's desire to expand language access, consideration should be made to include an additional waiver section for attorneys who may not meet the minimum qualifications but who speak another language.***	The committee agrees that access to judicial proceedings for persons with limited English proficiency is critically important. The committee has modified its recommendation to expand the exception in rule 7.1104(b) to authorize the court to appoint an attorney who does not meet the qualifications in rule 7.1102 or 7.1103 if it finds that appointment of that attorney is necessary to serve the client's special needs or interests. The committee intends this exception to encompass the language-access needs of a client with limited English proficiency
			Q: Would the proposal provide cost savings? If so, please quantify. ***No.***	No further response required.
			Q: 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? ***Currently, a Court Operations Clerk tracks the submission of these forms. Training them to look for the new forms would be minimal. Our court may have to revise its local form coversheet to reflect some of the changes.***	No further response required.
			Q: Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? ***Yes.***	No further response required.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated

	Commenter	Position	Comment	Committee Response
			Q: How well would this proposal work in courts of different sizes? ***It may be difficult for attorneys to meet these qualifications in smaller counties.***	The committee intends the alternative qualifications in rules 7.1102(b) and 7.1103(b), the exceptions authorized under rule 7.1104(b), and its efforts with Judicial Council staff to provide applicable education via distance learning to address the difficulties faced by attorneys, including those practicing in smaller counties, to meet the experience-based qualifications and annual education requirements.
			GC-010: The current version of the form has the following statement at 3.e. and #4.d., "I will, if requested, provide the case names and numbers, courts and parties I represent in the court proceedings identified above and, if item 3c(2)(E) is checked, redacted copies of the estate planning documents prepared." This should be included in the revised version of the form. Items #3.a, 4.a, and 5.a: for the second checkbox listed in each section, there should be a line provided for the applicant to list the name of the attorney, law firm, qualifying legal services provider, or government agency who has been approved by the Presiding or Supervising Judge.	The committee does not recommend the suggested changes. The committee instead proposes streamlining form GC-010 and revoking form GC-011 to simplify the certification process and make it compatible with variations in local processes. Rule 7.1105(d) authorizes a court to require the attorney to submit documentation in support of any statement made on the certification. Rule 7.1101(c)(5) & (d) and rule 7.1104(a) authorize a court to impose additional requirements, including substantive qualifications and procedural requirements, as conditions for appointment or placement on a list or panel. Item 7 on form GC-010 is intended to provide space for a certifying attorney to supply any additional information required by the form or local rule.
9.	Trusts and Estates Section Executive Committee (TEXCOM) California Lawyers Association by Melissa R. Karlsten, Member, and Saul Bercovitch, Director of Governmental Affairs	NI	TEXCOM greatly appreciates PMHAC's careful consideration of the comments TEXCOM submitted in response to the original proposal, and the numerous changes PMHAC made in response to those comments and comments submitted by others. TEXCOM also acknowledges, as the Invitation to Comment notes, that the "amendments to the experience and education requirements try to balance the need for attorneys to have specific knowledge and experience to provide adequate	The committee appreciates TEXCOM's comments. See below for responses to specific concerns.

	Commenter	Position	Comment	Committee Response
			representation with the need to encourage less experienced attorneys to enter the field." We recognize that striking the proper balance requires the consideration of numerous factors. Notwithstanding the changes made in the revised proposal, TEXCOM remains concerned that the proposed rules will discourage attorneys from applying for court appointed panels, significantly reducing the number of attorneys available to serve in this important role. We note that PMHAC has revised the proposed rules to reduce the annual education requirement to three hours by dividing the experience requirement into two separate rules, those for wards and proposed wards, and those for conservatees and proposed conservatees. While acknowledging the marked reduction in educational requirements, TEXCOM is concerned that by giving "attorneys the opportunity to focus on one type of representation without increasing the educational burden," it will still be overly restrictive since it may prevent a broader pool of attorneys that qualify for both, thus creating a larger number of attorneys that qualify to represent conservatees and proposed conservatees than wards and proposed wards, or vice versa. Perhaps the annual education requirement should be three hours where an attorney only applies for one category but four hours in the instances where an attorney wishes to qualify for both, two hours in each category.	The committee does not recommend reducing the annual education requirements any further. The specific knowledge required to represent a minor child in a guardianship proceeding is sufficiently distinct from the knowledge required to represent an adult client in a conservatorship proceeding to justify separate education requirements covering distinct subject matter. Three hours seem to be the minimum time required to cover each set of subjects in sufficient depth. The committee does not view six hours of education per year to be excessively burdensome for attorneys who want to be eligible for appointment to represent wards and conservatees. The committee recognizes that education meeting the subject matter requirements may be difficult to find. The committee has reduced the number of required subjects while keeping them focused on guardianships or conservatorships as required by statute, and has authorized delivery of qualifying education through any distance learning method approved by the State Bar. Finally, to increase the statewide availability of education that allow attorneys to meet the chapter's requirements, the committee is working with Judicial Council staff to develop applicable recorded webinars and other online courses that will be available, at no cost, in time to allow completion before January 1, 2021.

	Commenter	Position	Comment	Committee Response
			TEXCOM also acknowledges PMHAC's revisions found in rule 7.1102(d) and rule 7.1103(d) such that the supervising attorney is not required to work at the same firm or organization as the attorney being supervised. However, given California's recently enacted rules of professional conduct, specifically rule 5.1, TEXCOM is concerned that attorneys not in the same firm will be hesitant to supervise or act as a mentor to new or inexperienced attorneys. While an ethical violation by a supervising attorney under rule 5.1 calls for ratification or knowledge coupled with a failure to remediate, we anticipate that the risk alone will likely deter experienced attorneys from acting as supervisors to attorneys outside their firm or organization.	The committee agrees that the requirement as circulated could have been interpreted to require the experienced attorney to have "direct supervisory authority" over the inexperienced attorney and, therefore, a duty to remedy a known ethical violation. The committee does not intend to require the experienced attorney to assume that duty as a condition of the inexperienced attorney's qualification for appointment under rule 7.1102(b) or 7.1103(b). To clarify this intent, the committee has revised the rules to allow an inexperienced attorney to meet the alternative qualifications in part by working in close professional consultation with *or* under the supervision of an experienced attorney. The committee intends "working in close professional consultation" to describe a professional relationship in which the inexperienced attorney receives the benefit of the experienced attorney's knowledge and skills and applies them to provide effective representation. Consulting attorneys may wish to make clear from the outset the scope and limits of their relationship to avoid unanticipated ethical issues.
			Finally, the Request for Specific Comments in the Invitation to Comment asks: "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?" TEXCOM believes the issue of the experience requirement could be resolved by expanding the scope of the exemption for small courts. In fact, TEXCOM suggests that the rules expand the court's discretion such that any court, without limitation, can waive any of the requirements in rule 7.1102(c)–(g) or 7.1103(c)–(g) if it cannot find qualified counsel, there is other hardship, or good cause is found.	The committee agrees that the exception to the requirement to appoint only qualified attorneys should be expanded to apply to all courts. The committee has not been able to draw a reasonable line between courts of different sizes for the purposes of these rules. The current rule, authorizing an exemption for courts with four or fewer authorized judges, is not correlated to the number of guardianship or conservatorship filings in the court and is therefore somewhat arbitrary. Reported data for filings appear to vary in completeness from court to court, so an exemption based on the number of annual filings would also be arbitrary. Furthermore, circumstances can arise

	Commenter	Position	Comment	Committee Response
			The rules could also provide courts with the discretion to adjust but not completely waive certain requirements. As one example only, this would allow a court to create an internal supervision or mentoring program with the public defender's office or a local law school. Vesting discretion with the court familiar with the needs of its population would serve to minimize the impact of any unduly restrictive or prohibitive experience requirement.	in any court in which it may be necessary to appoint an attorney who is not certified under these rules but who has other special qualifications to meet the needs or interests of a specific client. The committee has therefore modified its recommendation to authorize a court of any size to appoint a noncertified attorney on an express finding of necessity, which may include the lack of available qualified counsel or the need to serve a client's special needs or interests.

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1.	California Advocates for Nursing Home Reform (CANHR) by Anthony Chicotel, Staff Attorney San Francisco	AM	**The rule should promote zealous advocacy by court-appointed attorneys where it can.** 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: Add zealous advocacy to the subject matters listed in the Rule's subsection (g) that may be	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 these rules serve that purpose, as it is beyond the scope of the proposal. 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 *has* entered this arena, it has done so at the express direction of the Legislature and, in 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) (duties of court-appointed minor's counsel).) Here, Probate Code section 1456 directs the council to specify the qualifications and the amount and subject matter of annual 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, and 1471, however, specifies, or invites the council to specify, the role and duties of counsel. The committee believes that the role and duties of an attorney to a client are best covered in the

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			used to satisfy the MCLE requirements specified in subsection (f);	general legal ethics training required of all attorneys. Nevertheless, the committee has modified its recommendation to add the attorney-client relationship and a lawyer's ethical duties to a client to the subjects included in rule 7.1103's annual education requirements.
			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.	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.
			Add other important subjects to the options for required education. 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.	The committee agrees that knowledge of less-restrictive options to conservatorship, including supported decisionmaking, is important and has added them to the subjects included in rule 7.1103's annual education requirements.
			Clarify that the education and experience requirements do not apply to retained counsel. The Rule applies to court-appointed counsel. Unfortunately, courts sometimes require	The committee agrees that the rules, as authorized by section 1456, apply only to counsel appointed by the court under section 1470 or 1471, and has modified its recommendation to clarify the scope of the rules.

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			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. **Provide an experience exemption for attorneys with a demonstrated proficiency in conservatorship cases.** 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. The experience requirement looks as though it was written by probate attorneys for probate attorneys, creating a possible Catch-22. The only way one can get the experience	The committee believes that the temporal proximity of an attorney's experience to the attorney's appointment is important, but it also 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 *five* years, tailoring the subject matter more narrowly to conservatorship proceedings, and requiring experience in only one contested proceeding or trial. The committee has revised the proposed alternative qualifications in rules 7.1102(b) and 7.1103(b) to authorize an attorney who has not personally met the experience requirements to

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			"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. 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.	accept appointments if supervised by or working in close consultation with an attorney who has met the experience requirements. The committee does not recommend authorizing an exemption based on "demonstration of proficiency" without more specificity. Instead, the committee has amended rules 7.1102(b) and 7.1103(b) to specify alternative qualifications for appointment that do not depend on the appointed attorney's personal experience. An attorney who works for a court-approved organization and is supervised by or working in close consultation with an experienced attorney may qualify for appointment. In addition, an attorney who has completed three hours of applicable education in the same subjects required for annual education and is working in close consultation with an experienced attorney may also qualify for appointment.
2.	Disability Rights California Legal Advocacy Unit by Melinda Bird, Sr. Litigation Counsel Los Angeles	AM	**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.	The committee appreciates DRC's comment. Please see below for responses to specific concerns.

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			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. 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):	The committee agrees with the suggestion and has added a specific reference to the state protection and advocacy agency to rule 7.1103(b). The committee has revised the alternative qualifications in rule 7.1103(b) to increase the flexibility of the supervision and consultation requirements.

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			(e) Alternative experience requirements 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: (1) Works for a private law firm, a legal services organization (including the state protection and advocacy organization), 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 (2) Is directly supervised by an attorney working in the same firm, organization, or office who satisfies the applicable experience requirements in (d), or is employed by the state protection and advocacy agency. **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.	The subject matter of education that may be applied to meet the rules' requirements is now specified in rules 7.1102(d) and 7.1103(d). No further response is required.

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			3. Modify GC-255 Form To Permit Termination of a Conservatorship or Create 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. 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. 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.	No further response is required. The committee does not recommend development of a statewide form to petition for termination of a conservatorship, as that form is beyond the scope of this proposal. The committee will retain the suggestion for future consideration.
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	AM	We offer the following comments to the proposed change in Rule 7.1101. The topics required to be included in mandatory training are generally good. However, we	The committee appreciates Spectrum Institute's comments.

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	by Nora J. Baladerian, PhD Disability and Abuse Project		suggest that two additional matters be added: (a) alternatives to guardianship, including supported decision-making, and supports and services available to make such alternatives feasible; and (b) disability and sexuality, especially as those issues pertain to the topics of rights, abuse, and capacity. 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. 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	The committee recognizes that an informed determination of whether a conservatorship is the least restrictive alternative necessary to protect the proposed conservatee requires awareness and consideration of alternatives. The committee has added less-restrictive alternatives to conservatorships, including supported decisionmaking, to the subjects included in rule 7.1103's annual education requirements. The committee does not recommend adding the suggested topic to the subjects included in rule 7.1103's annual education requirements. The committee anticipates that the education on the rights of conservatees and persons with disabilities under rule 7.1103(d) will address these issues.

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			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. 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. *Excerpts from Thomas F. Coleman, "Proposed Rule Aims to Improve Legal Advocacy in Conservatorship Proceedings," *Daily Journal* (Apr. 13, 2018): 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. 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.	The committee appreciates the additional comments submitted as a copy of an editorial in the *Daily Journal.* No further response is required.

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			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 communication disabilities. 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. 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. So far so good. But some significant problems remain.	

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			* * * 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 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. 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. 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.	The committee has added instruction on less restrictive alternatives to conservatorship, including supported decisionmaking, to the subject matter listed in rule 7.1103(d). The remaining comments raise important concerns, but are beyond the scope of this proposal.

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			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. 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. 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	

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			mentioned in the training program or detailed in the performance standards. 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. In order to make the complaint process 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. 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. The next step is for the Probate and Mental Health Advisory Committee to adopt the modifications suggested here. But most	

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			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.	
5.	Superior Court of Los Angeles County (no name provided)	AM	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. 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. 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	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. The committee does not intend the amendments to preclude a court from adopting local rules imposing additional requirements on attorneys seeking appointment under section 1470 or 1471. The committee has revised rules 7.1101(d) and 7.1104(a) to clarify that a local court has the authority to adopt additional requirements, including an application requirement.

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			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, provisions relating to the issues of attorney compensation, attorney conflicts and discretionary appointments of counsel which terms are all agreed to by the applicant. Thus, the proposals in both subdivisions (d) and (g) should read: (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. (g)(4) A court may develop local rules imposing	

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			additional education requirements for attorneys to qualify for appointment under section 1470 or 1471, including an application by private counsel. 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 court-appointed counsel. 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	The committee intends rule 7.1105 to ensure that an attorney has met the requirements in the rules, and does not recommend specifying statewide procedures for addressing failure to meet the requirements. Those procedures are best left to the discretion of local courts. The committee does not recommend the suggested change. Rules 7.1101–7.1105 establish minimum statewide requirements as required by section 1456. Just as a local court has the authority to establish procedures required for placement on a panel, so does the court retain authority to establish procedures for removal from a panel. Nothing in the rules provides that satisfaction of their requirements is *sufficient* to entitle an attorney to be placed on a panel or

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			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.	appointed as counsel. 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 legal culture.
			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 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.	The committee has revised its recommendation to remove the term "counsel of record."
			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.	The committee agrees that the term "court-appointed counsel" should be hyphenated wherever it occurs in the rule and forms.
			Request for Specific Comments: **Does the proposal appropriately address the**	

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			stated purpose? 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.	See response to the comments above.
			Would the proposal provide cost savings? If 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.	No further response is required.
			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,	No further response is required.

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			though any significant retraining or systematic changes caused by these changes is not anticipated. **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 modified by other agencies. **How well would this proposal work in courts of different sizes?** The changes will work well in a large court such as LASC.	No further response is required. No further response is required.
6.	Superior Court of Riverside County by Susan Ryan, Chief Deputy, Legal Services	A	We welcome the several substantive changes made by this proposal. 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	The committee appreciates the court's comment. No further response is required.

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			modified to prevent this result. 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. 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 reasons. 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	The committee no longer relies on the rationale discussed by the commenter. The committee recognizes that appointment of counsel creates a presumptive 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. The committee has not found any legal authority for the position that a proposed conservatee necessarily lacks the ability to select an attorney or to establish an attorney-client relationship or for the position that lack of either of those abilities is a necessary 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 an issue of fact for the court's or jury's

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			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.	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. 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 the existing 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 California Rules of Court was 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

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				California (May 9, 2018, S240991) [p. 6].)
			Does the proposal appropriately address the stated purpose? Yes.	No further response is required.
			Would the proposal provide cost savings? No.	No further response is required.
			What would the implementation requirements be for courts? Minimal.	No further response is required.
			Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	No further response is required.
			How well would this proposal work in courts of different sizes? Equally well.	No further response is required.
7.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	**Does the proposal appropriately address the stated purpose?** Yes.	The committee appreciates the comment. No further response is required.
			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,	No further response is required.

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			maximizing their hours worked and reducing the need to request continuances, which could also result in a reduction of fees paid by the County. **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.** 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. **Would three months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?** The preference would be to allow at least six-months to give the attorneys enough lead time to obtain additional training, if needed.	No further response is required. The committee does not recommend delaying the effective date of the rules. Rule 7.1101(e) provides that the rules are not retroactive and that an attorney who has submitted an initial certification under the existing rule is not required to submit a new initial certification. The amended

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				annual education requirements take effect January 1, 2020, but attorneys will have 12 months to complete them. Annual education completed in 2019 must satisfy the rule then in effect.
			How well would this proposal work in courts of different sizes? This proposal should work fine in courts of all sizes.	No further response required.
8.	Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Subcommittee (JRS) (no name provided)	A	The JRS believes that these changes are necessary to: • 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 of related MCLE.	The committee appreciates the JRS's comment. The committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who wish to be appointed under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to be appointed under section 1470 or 1471 to represent conservatees and proposed conservatees. This separation will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but it will require additional education hours for an attorney who wishes to accept appointment to represent both categories of client. Each rule requires three hours of annual education in the area of representation that it covers. An attorney who wishes to be appointed to represent both wards and conservatees would need to meet the qualifications and complete the annual education requirements in both rules. The committee also recommends adopting an

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				alternative to allow an attorney to qualify for appointment in either area by completing three hours of education in that area in the same subjects as required for annual education.
			• 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.	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.
			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.	As mandated by Probate Code section 1456, the rules establish, as rule 7.1101 has since its adoption in 2007, minimum qualifications, education requirements, 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

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				fulfill the specific mandate in section 1456 if it did not set mandatory minimum standards in the rules.
			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 this rationale be removed or modified to prevent this result. 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. 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 flows from the county, the court lacks authority to impose standards for the representation.	The committee no longer relies on the rationale discussed by the commenter. 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 a presumptive 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.

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			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.	The committee has not found any legal authority for the position that a proposed conservatee necessarily lacks the ability to select an attorney or to establish an attorney-client relationship or for the position that lack of either of those abilities is a necessary 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 an 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. 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 the existing 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 California Rules of Court was adopted by Supreme Court under its inherent authority over admission and discipline of

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				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].)
9.	Trusts and Estates Section of the California Lawyers Association Executive Committee (TEXCOM) by Chris Carico, Attorney at Law Los Angeles	N	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: 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.	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. The committee recognizes TEXCOM's concern and has revised the proposal to reduce the quantity of the requirements while focusing their content more closely to the experience and education needed by an attorney to provide effective representation to a client subject to a petition for appointment of a guardian or conservator.

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			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.	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 expand the qualifying experience that may be gained as retained counsel, such as experience representing petitioners, and to establish alternative qualifications that allow less-experienced attorneys to be appointed if they either work for an approved organization and are supervised by or working closely with an experienced attorney or have completed introductory education requirements and are working closely with an experienced attorney.
			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	In response to this and other comments, the committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who wish to be appointed under section 1470 to represent wards and proposed wards, and rule 7.1103, for attorneys who wish to be appointed under section 1470 or 1471 to represent conservatees and proposed conservatees. This separation will give attorneys the opportunity to focus on one type of representation without increasing their educational burden, but it will

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			the panel.	require additional education hours for an attorney who wishes to accept appointment to represent both categories of client. Each rule requires three hours of annual education in the area of representation that it covers. An attorney who wishes to be appointed to represent both wards and conservatees would need to meet the qualifications and complete the annual education requirements in both rules. The committee also recommends adopting an alternative to allow an attorney to qualify for appointment in either area by completing three hours of education in that area in the same subjects as required for annual education.
			FACTUAL ASSUMPTIONS For purposes of our analysis, we have assumed the following facts to be true:	
			1. For advocacy to be effective, there must be advocates in the first place.	The committee agrees with this assumption.
			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.	The committee agrees with this assumption.
			3. Appointment to represent proposed conservatees and wards traditionally has been an entry point for attorneys (particularly young	The committee takes no position on the accuracy of this assumption, but questions whether the assumed state of affairs is entirely desirable given

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			attorneys) to become involved in probate matters, particularly disputed matters. This has been an incentive for attorneys to make themselves available for appointment.	the importance of the fundamental rights assumed in 2, above.
			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.	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.
			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.	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

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				counsel. The investigator's report, due no later than five days before the hearing on the petition, must discuss the conservatee's communications regarding representation by counsel. Even if a party'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.
			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.	The committee takes no position on this assumption, but has considered 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," in its deliberations.
			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.	See response to the previous assumption.
			8. Probate Code section 1456, specifies education and other requirements for a. Court-employed staff attorneys b. Examiners c. Investigators d. Judges on probate assignments, and	The committee does not question this assumption, but notes that the education requirements for probate court employees are set forth in rule 10.478 (*Court Investigator:* 18 hours within one year of start date; *Court attorney:* 18 hours within 6 months; *Examiner:* 30 hours within one year, including 18 hours on guardianships and

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			e. Attorneys appointed under Probate Code sections 1470 and 1471 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. ANALYSIS 1. The Increase in the MCLE Requirement Is Likely to Discourage Attorneys from Making Themselves Available for Appointment A. We Believe the Proposed Requirement of Six Hours of Specialized Education Each Year is Excessive The rule proposes requiring attorneys to complete six hours of specified continuing education each year. Specifically, it proposes:	conservatorships. All of the foregoing: 12 hours of annual education. For attorneys and examiners, six of the 12 hours must be in guardianships and conservatorships.). The education requirements for judicial officers are set forth in rule 10.468 (Initial: 6 hours in first 6 month; 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 annual education in each). Nevertheless, the committee is working with Judicial Council staff to develop online education available statewide free of charge to enable attorneys to meet their annual education requirements. The committee shares TEXCOM's concern that the burden of the rule's educational requirements on attorneys not exceed their benefit to clients. 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' time and finances with the need for well-trained attorneys, the committee has modified its recommendation to separate the qualifications and annual education requirements into two rules: rule 7.1102, for attorneys who

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			Except as provided in (2) each calendar year 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 added.)	wish to be appointed to represent wards or proposed wards; and rule 7.1103, for attorneys who wish to be appointed 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 eliminated the initial education requirement. An attorney wishing to be appointed to represent clients in both categories would still 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.
			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.	The committee has also revised the proposal to separate the subjects applicable to attorneys appointed to represent wards or proposed wards (rule 7.1102(d)) from the subjects applicable to attorneys appointed to represent conservatees, proposed conservatees, or persons alleged to lack legal capacity (rule 7.1103(d)). An attorney who wishes to accept appointment to represent clients in only one category may focus on training directly relevant to that representation.
			As noted in the Implementation discussion of	The State Bar's requirement of 25 hours every

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			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 hours) with the required specialized classes, and will still be required to take the ethics and substance abuse courses. 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. 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	three years sets a minimum threshold. An attorney is encouraged to take as many additional hours as needed or desired to acquire and maintain competence in a chosen area of practice. 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. See, e.g., rules 5.242 (family law child custody: 12 hours of initial education; 8 hours of annual); 5.660 (child welfare: 8 hours initial education or recent experience; 8 hours ongoing every 3 years); 5.664 (12 hours initial education within previous 12 months or 50% of practice; 8 hours annual). 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.

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			service to the court and the public.	Counsel who serve under those expectations would seem likely to regard any compensation 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.
			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 volunteer.	The committee has reduced the required number of hours of annual education to allow more attorneys to meet the requirement. The hours required would be consistent with or fewer than the hours required for attorneys specializing in other fields.
			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.	The committee notes that the State Bar has established "Minimum Continuing Legal Education" requirements. Attorneys who practice in areas of law that require specialized knowledge are encouraged, and may be required, to complete additional hours of education to be able to provide competent representation to their clients. Statutory mandates to establish minimum education requirements in specific fields, such as that in section 1456, reflect the Legislature's determination that additional, focused education is especially important in those fields.
			More generally, it seems likely that the increase	The committee has reduced the number of hours

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			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. B. We Do Not Believe the Proposed Alternatives Solve the Problem 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. 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)." 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	of education to reduce the burden on appointed attorneys. The hours required would be consistent with or fewer than the hours required for attorneys specializing in other fields, including juvenile justice and family law child custody proceedings. The committee has modified the recommendation to minimize any reduction in the number of available, qualified attorneys by making clear that the amendments are not retroactive; that an attorney who has submitted an initial certification of qualifications under existing rules need not submit a new initial certification; and that the annual education requirements apply to education completed after January 1, 2020. The committee has modified its recommendation to remove the initial education requirements and to expand the alternative qualifications. In addition to authorizing qualification by working for an approved organization supervised by or in

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			"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)."	close consultation with an experienced attorney, the committee has authorized a second alternative qualification, directed primarily at sole practitioners, by completing three hours of initial education within the 12 months before initial availability for appointment and working in close consultation with an experienced attorney.
			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.	The committee has modified its recommendation to eliminate the transitional provisions. The reduction in the number of hours and subjects required for annual education, the availability of a year to complete the first set of new requirements, and the projected availability of free online education are intended to encourage attorneys to continue to make themselves available for appointment.
			2. The Experience Requirements Present a Potential Problem That May Slowly Reduce the Number of Attorneys Eligible for Appointment 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	The committee has modified its recommendation to allow an attorney to count experience in the five years before first availability for appointment and has simplified the experience requirement in rule 7.1103(a) to require representation of a petitioner, objector, *or* (proposed) conservatee in at least three conservatorships, including mental health conservatorships. Neither the statutes nor the rule have ever been intended to require

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			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? 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 Completed at least two of the following tasks in the last three years: (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 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	previous appointment as a condition of appointment. The statutes assume that a proposed ward or conservatee may retain counsel if they wish. The committee recognizes that this may be a rare occurrence, but nevertheless does not believe the rarity diminishes the value of the experience acquired.

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			asset management. 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. With the prevalence of revocable trusts, not many attorneys will do three complete court-filed accountings in three years.	The committee has modified its recommendation to remove the language in question and to address many of TEXCOM's concerns. See the response to the comment above. The committee agrees with the comment and has removed representation of a fiduciary on a petition to approve an accounting from the applicable qualifications. The committee also notes that appointment of an attorney to represent a ward or conservatee when a fiduciary fails to file an account is governed by section 2620.2, not by section 1470 (except for compensation) or 1471. The requirements of these rules, therefore, do not apply to those attorneys.

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			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.	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.
			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.	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 requirement from the proposed rules.
			<u>Illustrations</u> 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.	The committee has modified the alternative qualifications to allow a sole practitioner to qualify for appointment after three hours of applicable initial education if the attorney is working in close consultation with an experienced attorney.

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			If a 65-year old attorney with a great amount of litigation experience in the probate field, who 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.	The committee recognizes that this attorney might not immediately qualify for appointment but, for reasons similar to those mentioned by TEXCOM, above, believes that at least some experience or education specific to conservatorships is appropriate before appointment.
			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.	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 amended rules authorize a court to appoint an attorney who does not meet the specific qualifications and annual education requirements on a finding of necessity.
			Alternative Work Experience 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.	The committee agrees with the suggestion and has modified the alternative qualifications to allow an attorney working in close consultation with an experienced attorney to qualify for appointment if other work or education requirements are met.
			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	The committee has never intended that the rule require previous appointment as a condition for later appointment. The statutes and the existing

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			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 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. 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. 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.	rule assume that a proposed ward or conservatee may retain counsel in some circumstances. The committee has modified the amended rules 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 attorney without the required experience to accept appointment if other conditions are met. The committee believes that the formal relationship between an attorney appointed under section 1470 or 1471 and an attorney with whom the appointed attorney consults is best left to an agreement between the attorneys themselves or their firms and organizations. Nothing in the proposed rules requires that a supervising or consulting attorney be named in an appointment order or have the authority to direct the appointed attorney necessary to establish a basis for liability under rule 5.1.

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			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. 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.	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 committee intends the proposed rules to establish minimum requirements that ensure adequate qualification without being excessively burdensome or difficult to satisfy.
			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	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.

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			enemy of the good.	
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.

Qualification and Annual Education Rules for Appointed Counsel
(Probate Code, §§ 1470 & 1471)

EXISTING RULE	RECOMMENDED RULES
Basic qualifications for private counsel (7.1101(b)) Active member of State Bar for at least three years before initial appointment No discipline imposed in 12 months immediately before availability for appointment Errors & Omissions (E&O) insurance satisfactory to the court, minimum $100K/claim and $300K/year	***Basic qualifications for all (7.1101(c))*** Active member in good standing of State Bar ***OR*** Registered legal aid attorney qualified under rule 9.45 No discipline imposed in 12 months immediately before availability for appointment E&O insurance with minimum coverage of $100K/claim and $300K/year or self-insurance program at equivalent levels.
Basic qualifications for deputy public defenders (DPDs) (7.1101(c)) Active member of bar for at least three years before initial appointment E&O insurance satisfactory to the court, minimum $100K/claim and $300K/year ***OR*** Covered at an equivalent level by county self-insurance program	***Basic qualifications for all (7.1101(c))*** Same as above.
Local Rules (7.1101(g)) Court may establish higher requirements, additional requirements, and other requirements, like an application	***Local Rules*** ***Substantive (7.1101(d))*** No prohibition on additional or more rigorous requirements by local rule ***Procedural (7.1104(a))*** Local court administration, lists/panels, approval of legal service providers or public defenders (if contractors), applications, etc.
Experience required for appointment to represent wards (7.1101(b)(1), (c)) Within past 5 years, must have represented at least 3 wards or proposed wards in probate guardianships, minors in child welfare or juvenile justice, or minors in family law custody proceedings	***Experience required for appointment to represent wards (7.1102(a))*** Within past 5 years, must have personally represented a petitioner, objector, respondent, minor child, or nonminor dependent in at least 3 guardianships, child welfare proceedings, or family law child custody proceedings

OR Must be qualified for appointment (1) Under rule 5.660 and local rules or (2) Under rule 5.242, including under the alternative "experience" requirements of rule 5.242(g). ***OR*** If DPD who doesn't meet either of previous two requirements: 3+ years' representing children in child welfare or juvenile justice [Problems: PD doesn't represent children in child welfare; juvenile justice experience virtually irrelevant to guardianship proceedings; section 1470 doesn't authorize discretionary appointment of PD]	***OR*** Must satisfy experience requirements in 5.660(d) and local rules *or* in rule 5.242(f)
Alternative qualifications for appointment to represent wards (7.1101(b)(1), (c)) None, except as provided in rules 5.660 or 5.242. Unqualified DPDs may substitute for qualified DPDs if certified by the Public Defender as working under the direct supervisions of a qualified DPD.	***Alternative qualifications for appointment to represent wards (7.1102(b))*** • Work for approved attorney, firm, or legal service provide (NB: Not public defender, as 1470 does not authorize appointment of PD to represent wards) *and* • Supervised by *or* working in close consultation with experienced attorney ***OR*** • Three hours of qualifying education *and* • Working in close consultation with experienced attorney
Annual education required for appointment to represent wards (7.1101(b)(1)(C), 7.1101(f)) • 3 hours total, aggregated with conservatees' counsel • Any subject that qualifies for Minimum Continuing Legal Education (MCLE) credit in estate planning specialization • Exception: Permitted to represent a child in a guardianship only of the person if the attorney meets the annual education requirements for appointment in child	***Annual education required for appointment to represent wards (7.1102(c)–(d))*** • 3 hours, separate from conservatees' counsel • guardianship-specific, including child representation, Indian Child Welfare Act, child abuse and neglect • Approved for MCLE credit • Okay if in person or any State Bar–approved mode of distance learning

welfare or family law custody proceedings	
Experience required for appointment to represent conservatees et al. (7.1101(b)(2), (c) Within 5 years immediately before first availability, must: • Have represented 3+ (proposed) conservatees in probate or LPS conservatorships ***OR*** • Have done any three of the following: o Represented 3 petitioners in probate conservatorships; o Represented 2 parties in contested probate or LPS conservatorships; o Represented a party for whom the court could appoint counsel in 3 matters under specified section in division 4; o Represented fiduciary in 3 cases for settlement of account; or o Prepared 5 wills, trusts, durable health care POAs, or durable financial POAs ***OR*** • If DPD, in addition to above, 3 years' experience representing patients in postcertification judicial proceedings or conservatorships under the LPS Act	***Experience required for appointment to represent conservatees et al. (7.1103(a))*** Within 5 years immediately before first availability, must: • Have personally represented petitioner, objector, (proposed) conservatee, or person alleged to lack capacity or be gravely disabled in at least 3 separate proceedings, including at least one contest or trial, under either division 4 of the Probate Code or the LPS Act
Alternative qualifications for appointment to represent conservatees et al. None	***Alternative qualifications for appointment to represent conservatees (7.1103(b))*** • Work for approved attorney, firm, public defender, or legal service provider *and* • Supervised by *or* working in close consultation with an experienced attorney ***OR*** • Three hours of qualifying education *and*

	• Working in close consultation with an experienced attorney
Annual Education required for appointment to represent conservatees et al. (7.1101(f)(1)) • 3 hours total, aggregated with education required for appointment to represent wards • Any subject that qualifies for MCLE credit in estate planning and probate specialization	***Annual Education required for appointment to represent conservatees et al. (7.1103(c)–(d))*** • 3 hours, separate from wards • conservatorship-specific, including capacity, legal rights of conservatees, persons alleged to lack capacity, persons with disabilities, attorney-client relationship and legal ethics, special considerations for representing older adult or person with disability • Approved for MCLE credit • Permitted if in person or any State Bar–approved mode of distance learning
Exemption, waiver (7.1101(e)) • Courts with 4 or fewer authorized judges • Express written finding of no available qualified counsel or other *hardship* • All qualifications waivable, including licensing, absence of discipline, and adequacy of insurance (mitigated to some extent by requirement of adequate self-insurance)	***Exception (7.1104(b))*** • All courts • Express finding of *necessity,* orally on record or in writing • Necessity includes no available qualified counsel or special needs or interests of person to be represented • Applies only to experience, alternative qualifications, and annual education; no exception to licensing, disciplinary history, and insurance requirements
Certification Rule (7.1101(h)) Initial: "qualified under (b) or (c)," which lump licensing, no discipline, insurance, and experience together Must *immediately* advise court of discipline Annual: any "change" to discipline or insurance/self-insurance with descriptions of changes and has completed annual education Form submitted but not filed or lodged	***Certification Rule (7.1105)*** Initial: Attorney must certify separately that meets basic requirements (7.1101(c)) *and* is qualified under specific applicable rules (7.1102(a) or (b) for wards; 7.1103(a) or (b) for conservatees; or both) Annual: Attorney must (re)certify that meets basic requirements (7.1101(c)) *and* has completed applicable annual education (7.1102(c)–(d); 7.1103(c)–(d); or both) Must notify court of discipline *in writing within 5 court days* and describe

	Court may require documentation of any statement on form Form is confidential; submitted but not filed or lodged
Certification Forms (GC-010 and GC-011) • One form for initial certification (4 pp.) • Separate form for annual certification (1 p.) • Mandatory forms • Detailed, complex items, multiple alternatives, purpose not always clear • Some items more like application than certification, cross-reference other items (e.g., if you want this, complete this item unless this, in which case, complete that other item) • Submitted but not filed or lodged	***Certification Form (GC-010)*** • Single form for both initial and annual certification (2 pp.) • General items, with directions and space to explain answers • Basic qualifications (license, no discipline, insurance) must be certified initially, recertified annually • Initial qualifications certified once • Education compliance certified annually • Optional form • Asks general questions on first page; provides space on second page for explanation of details • Leaves more room for local courts to ask for additional information if they want it • Confidential; submitted but not filed or lodged Form GC-011 revoked.
Transitional provisions (7.1101(d)) • Three-month grace period for counsel appointed before effective date, then court discretion whether to allow continued representation, replace with qualified attorney, or appoint cocounsel • Court authority to appoint uncertified counsel for three months, then required to relieve if no submitted certification and appoint counsel who had submitted.	***Nonretroactivity clause (7.1101(e))*** • Amendments not retroactive • Attorney who submitted an initial certification of qualifications under old rules need not submit a new one ***Annual certification (7.1105(b))*** Applies to annual education requirements in effect in previous year, so gives appointed attorney a year to meet the new requirements.