

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

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**Report**

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee  
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DATE: July 29, 2009

SUBJECT: Probate Conservatorships and Guardianships: Value of Estate  
Property for Setting Surety Bond Amount for the Cost of Recovery  
on the Bond (amend Cal. Rules of Court, rule 7.207)  
(Action Required)

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Issue Statement

Rule 7.207 of the California Rules of Court was adopted effective January 1, 2008, to implement legislation requiring an additional amount of surety bond in conservatorships and guardianships of the estate to cover the cost of recovery on the bond.<sup>1</sup> The rule defines the amount of the additional bond in part as a percentage of the *appraised* value of the property of the estate. This is incorrect. The amount of the bond, including the amount of additional bond, is initially determined at commencement of the conservatorship or guardianship based on an estimate of the value of the estate contained in the petition for appointment of a conservator or guardian. The bond must be posted before the fiduciary is qualified to act as conservator or guardian and before the property of the estate is appraised.

Rule 7.207(b) contains transitional provisions requiring conservators and guardians appointed before the effective date of the rule to post the additional amount of bond no later than June 30, 2008. These transitional provisions no longer serve a useful purpose and should be eliminated from the rule.

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<sup>1</sup> Probate Code section 2320(c)(4), added by Stats. 2006, ch. 493 (Assem. Bill 1363), § 19 and amended by Stats. 2007, ch. 553 (Assem. Bill 1727), § 15. The statute delegated to the Judicial Council the task of establishing the amount of the additional bond.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council amend rule 7.207, effective January 1, 2010, to eliminate references to the appraised value of the estate in determining the amount of additional bond required under rule 7.207(c), and to delete the transitional provisions of rule 7.207(b).

The text of amended rule 7.207 is attached at pages 5–6.

### Rationale for Recommendation

Rule 7.207(c)(1)(A) and (B) provide that the amount of additional bond for the cost of recovery on the bond required by Probate Code section 2320(c)(4) is based in part on the *appraised* value of personal property of the estate and, in some circumstances, the *appraised* value, less encumbrances, of the estate's real property. This is not correct for the reasons that follow.

Probate Code section 2320 requires conservators and guardians of estates to post a surety bond measured, in part, by the value of the personal property, and sometimes the net value of real property, in the conservatorship or guardianship estate. Section 2320 does not specify the date of this value, but sections 2610(a) and 2613, which provide for the completion and filing of an inventory and appraisal of the property of the conservatee or ward, indicate that the appropriate valuation dates are the date of appointment of the conservator or guardian or, for property discovered or received by the fiduciary after that date, the value as of the date of the property's discovery or receipt.

But section 2320(a) requires the surety bond to be filed with the court before the newly-appointed fiduciary (1) may take any action to marshal (collect or gain access to and control of) the conservatee's or ward's property; (2) prepares the inventory of the property marshaled; (3) self-appraises the value of the cash-equivalent property collected;<sup>2</sup> (3) submits the inventory to the probate referee for the referee's appraisal of the non-cash property shown in the inventory; (4) receives the completed Inventory and Appraisal back from the referee; and (5) files the completed Inventory and Appraisal showing the appraised value of both cash and non-cash property. Therefore, the value of property on which the amount of the bond is initially based cannot be the appraised value because the appraisal is not due until 90 days (or more, with leave of court) after appointment (Prob. Code, § 2610(a)). Instead, the value on which the bond is initially based is the estimated value as of the date of appointment made by the petitioner in his or her petition for appointment of the fiduciary and the court

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<sup>2</sup> Both cash-equivalent and non-cash property is listed in the Inventory and Appraisal filed with the court. The probate referee appraises the value of the items of non-cash property only. The fiduciary simply fills in the value of the cash-equivalent items (such as bank account balances and currency) listed in the inventory.

orders the amount of bond in its order appointing the fiduciary.<sup>3</sup> Only later, after the Inventory and Appraisal is filed, is the bond adjusted (by further order of the court on application of the fiduciary under section 2320.1) to equal the actual appraised value of the estate property marshaled by the fiduciary.

This proposal strikes “appraised” from subparagraphs (A) and (B) of rule 7.207(c)(1). The valuation date remains the date of appointment (or later discovery or collection of estate property), but the initial bond is based on the petitioner’s estimate of that value, not on the appraised value.

The base amount of the bond attributable to the personal property of the estate is fixed in the statute as the value of the property, not its appraised value (Prob. Code, § 2320(c)(1)). Similarly, rule 7.205 provides that when the estate’s real property is to be included in setting the base amount of bond because the fiduciary has independent power to sell, borrow against, or lease that property for a term beyond a year, the net value of that property, not its net appraised value, is to be included. The change in rule 7.207 affecting the additional bond required by section 2320(c)(4) would make the rule consistent with the statutory and rule provisions for the base amount of the bond.

Rule 7.207(b) contains transitional provisions affecting conservators and guardians appointed before January 1, 2008, the effective date of the rule. These fiduciaries were required to post the additional bond required by section 2320(c)(4) no later than June 30, 2008. Subdivision (b) may be stricken in its entirety, existing subdivision (c) becoming subdivision (b): all references to appointments after December 31, 2007 in the heading and text of subdivision (a) may also be eliminated as no longer necessary.

#### Alternative Actions Considered

No action other than an amendment of rule 7.207 was considered. The initial proposal did not include the elimination of the transitional provisions of the rule, but this was added in response to a comment.

#### Comments From Interested Parties

This proposal was circulated for comment in Spring 2009 to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, probate-interest sections of the State Bar and local bar associations, and representatives of other organizations interested in probate matters. It was also circulated to court executive officers, presiding judges, individuals, and organizations with a more general interest in court-related issues.

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<sup>3</sup> See the estimates of estate value in item 3e on page 3 of the *Petition for Appointment of Probate Conservator* (form GC-310), and item 7 on page 2 of the *Petition for Appointment of Guardian of Minor* (form GC-210); and the orders establishing the initial bond amount in item 20 on page 2 of the *Order Appointing Probate Conservator* (form GC-340), and item 9 on page 2 of the *Order Appointing Guardian of Minor* (form GC-240).

Seven comments were received. All commentators are in favor of the proposal. A chart containing the comments received and the committee's responses is attached at pages 7-9.

Two commentators recommended additions to the proposal that was circulated for comment. Judge Joyce M. Cram, Supervising Probate Judge, Superior Court of Contra Costa County, recommends that the transitional provisions of rule 7.207(b) should be deleted from the rule as no longer necessary. As noted above, the advisory committee agrees and has revised the rule accordingly.

Three senior staff managers of the Superior Court of Riverside County recommend that the rule should be revised to clarify whether increases or decreases in the amount of the surety bond after appointment of a fiduciary are to be based on the value of the estate property at the time of appointment or on its later market value. The committee declined to address this issue at this time because it is beyond the scope of this proposal. The clarification would necessarily apply not only to the amount of additional bond covered by rule 7.207, but also to the base amount of the bond under Probate Code section 2320. This change would require legislation.

#### Implementation Requirements and Costs

This proposal will result in the usual costs associated with the amendment of any rule of court. These costs should be negligible.

Rule 7.207 of the California Rules of Court is amended, effective January 1, 2010, to read:

1 **Rule 7.207. Bonds of conservators and guardians**

2  
3 (a) ~~Bond for appointments after December 31, 2007~~ **Bond includes**  
4 **reasonable amount for recovery on the bond**

5  
6 Except as otherwise provided by statute, every conservator or guardian of the  
7 estate ~~appointed after December 31, 2007~~, must furnish a bond that includes  
8 an amount determined under ~~(e)~~ (b) as a reasonable amount for the cost of  
9 recovery to collect on the bond under Probate Code section 2320(c)(4).

10  
11 ~~(b) Additional bond for appointments before January 1, 2008~~

12  
13 ~~Except as otherwise provided by statute, every conservator or guardian of the~~  
14 ~~estate appointed before January 1, 2008, and the conservator's or guardian's~~  
15 ~~attorney, must after that date apply to increase the bond in the manner~~  
16 ~~described in rule 7.204 to include an additional amount determined under (e),~~  
17 ~~and must, no later than June 30, 2008, furnish the increased amount of bond~~  
18 ~~ordered by the court.~~

19  
20 ~~(e)~~ (b) **Amount of bond for the cost of recovery on the bond**

21  
22 The reasonable amount of bond for the cost of recovery to collect on the  
23 bond, including attorney's fees and costs, under Probate Code section  
24 2320(c)(4) is:

25  
26 (1) Ten percent (10%) of the value up to and including \$500,000 of the  
27 following:

28  
29 (A) The ~~appraised~~ value of personal property of the estate;

30  
31 (B) The ~~appraised~~ value, less encumbrances, of real property of the  
32 estate that the guardian or conservator has the independent power  
33 to sell without approval or confirmation of the court under  
34 Probate Code sections 2590 and 2591(d);

35  
36 (C) \* \* \*

37  
38 (D) \* \* \*

39

1 (2) \*\*\*  
2  
3 (3) \*\*\*

**SPR09-43****Probate Conservatorships and Guardianships: Value of Estate Property for Setting the Surety Bond Amount for the Cost of Recovery on the Bond** (amend Cal. Rules of Court, rule 7.207)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Hon. Joyce M. Cram Supervising Probate Judge Superior Court of Contra Costa County	AM	I am the Supervising Probate Judge in Contra Costa County.  The change proposed is worthwhile. However, the change should include deletion of transitional provisions which are surplusage and make understanding of the Rule more difficult than is necessary.  Subdivision (a) should be changed by deletion of “appointed after December 31, 2007, . . .” Subdivision (b) should be deleted.	The committee agrees with this recommendation and has revised the rule as requested. The transitional provisions in subdivision (b), which required conservators appointed before 2008 to post the additional bond required by the rule no later than June 30, 2008, are no longer needed. Also no longer necessary are references to post-2007 appointments in subdivision (a). The provisions of the latter subdivision would simply apply to all conservators.
2.	Orange County Bar Association Michael G. Yoder, President	A	No specific comment.	No response required.
3.	Superior Court of Los Angeles County	A	The proposed change is logical and appropriate for the reason stated: “This change is proposed because in a new conservatorship or guardianship the amount of bond is set at the time of the fiduciary’s appointment, before the personal or real property has been appraised by the Probate Referee and before the Inventory and Appraisal has been filed.” [Invitation to Comment, at page 2.]	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			Mental Health (LPS) Conservatorships are governed also by the rules of accounting and bonding in the Probate Code, and the same situation exists when a conservator is appointed initially for the Person and Estate. This change would allow bond to be posted prior to the appraisal being made and the filing of the Inventory and Appraisal, and prevent delays in the qualification of the conservator and performance of the conservator's duties pending bond. The amount of the bond can be adjusted by the Court if necessary following the filing of the Inventory and Appraisal.	
4.	Superior Court of Riverside County Carrie Snuggs, Regional Operations Director; Ann Toria, Court Division Manager; and Naomi Gaines, Court Division Manager	A	An additional change should be considered to clarify whether increases or decreases in the surety bond after initial appointment should be based on market value rather than carry value and what evidence of market value is sufficient.	This recommendation is beyond the scope of this proposal and would require legislation because a change would necessarily also apply to the base bond, governed by statute, not just the additional bond governed by rule 7.207.
5.	Legal Research Department and Self-Help Program Superior Court of San Bernardino County	A	No additional comments.	No response required.

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
6.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No additional comments.	No response required.
7.	Trusts and Estates Section, State Bar of California Neil F. Horton, Vice-Chair	A	No specific comment.	No response required.