

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
Douglas C. Miller, Committee Counsel,
415-865-7535, douglas.miller@jud.ca.gov

DATE: September 8, 2008

SUBJECT: Probate—Conservatorships and Guardianships: Court-Appointed
Counsel for Wards and Conservatees (amend Cal. Rules of Court,
rule 7.1101; revise form GC-010; and adopt form GC-011)
(Action Required)

Issue Statement

Rule 7.1101 of the California Rules of Court, adopted by the Judicial Council effective January 1, 2008, establishes the qualifications and continuing education requirements for attorneys appointed by courts to represent minors in guardianships, and conservatees and proposed conservatees in conservatorships. This rule does not address changes in an attorney's eligibility after his or her initial qualification. Its professional liability insurance requirements for appointed counsel may also impact the ability of small courts to find qualified attorneys.

The council also adopted, effective March 1, 2008, a new form for attorneys to certify that they are qualified for appointment under the rule, *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010). This form shows an attorney's qualifications for appointment only at the time of his or her first availability for appointment.

An additional form is needed that attorneys would file yearly, beginning in 2009, to show completion of the continuing education required under rule 7.1101 in years after 2007 and to demonstrate to appointing courts that they remain eligible for appointment in the years after their initial qualification.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2009:

1. Amend rule 7.1101 of the California Rules of Court to address professional liability insurance requirements for appointed attorneys in small courts and to clarify the requirements for demonstrating an attorney's continued eligibility for appointment in years after his or her initial qualification;
2. Adopt the *Annual Certification of Court-Appointed Attorney* (form GC-011) to enable appointed counsel to certify yearly that they have completed required continuing education and remain eligible for appointment under the rule; and
3. Revise the *Certification of Attorney Concerning Qualifications for Court Appointment in Conservatorships or Guardianships* (form GC-010) to implement the proposed changes in rule 7.1101.

The text of the amended rule 7.1101 is attached at pages 8–10; copies of the revised form GC-010 and new form GC-011 are attached at pages 11–15.

Rationale for Recommendation

Rule 7.1101

Professional liability insurance

Rule 7.1101(b)(3) requires appointed counsel in private practice to be covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year.¹ Rule 7.1101(e) provides authority for a small court—a court with four or fewer authorized judges—to waive the qualification requirements of the rule if it cannot find counsel qualified under the rule or for other grounds of hardship. However, the exemption expressly does not apply to the liability insurance requirement.

The advisory committee proposes to amend the rule to permit small courts, as defined above, to appoint an attorney in private practice who does not satisfy the professional liability insurance requirements if the attorney demonstrates to the court that he or she is adequately self-insured. A waiver under amended rule 7.1101(e)(4) would not be required. (See amended paragraph 7.1101(e)(2).)

¹ For purposes of the rule, an attorney in private practice is an attorney who is not a deputy public defender acting under the appointment of a county's public defender. A proposed new paragraph 7.1101(a)(7) would clarify the definition of "counsel in private practice" under the rule by including in the definition an attorney employed by or performing services under a contract with a nonprofit organization. This clarification is proposed in response to an inquiry about the applicability of the rule from such an organization received by the advisory committee at the time form GC-010 was being proposed for adoption in early 2008.

State Bar discipline

Rule 7.1101 addresses the qualifications for an attorney's appointment at the time the attorney initially becomes eligible. These qualifications include the absence of State Bar discipline imposed during the 12-month period before the date of first eligibility for appointment and no disciplinary proceedings pending on that date (rule 7.1101(b)). The latter provision would be deleted. The advisory committee believes that a pending State Bar disciplinary matter should not disqualify an attorney from initially qualifying for appointment.

However, the rule would also be amended to require the attorney to advise the court of the imposition of any State Bar discipline at any time after the attorney's initial eligibility for appointment.² Amended paragraph (h)(4) and a new paragraph (h)(5) would also require the attorney to (1) certify each year that his or her disciplinary history had or had not changed since his last certification, and (2) describe the circumstances if it had changed. These new provisions would eventually result in disclosure of an adverse decision on a disciplinary matter that had been pending when the attorney initially qualified for appointment.

Form GC-011

Rule 7.1101 requires counsel appointed by courts in guardianships and conservatorships to certify that they have completed the continuing education required by the rule, beginning in 2009 for education completed in 2008.³ New form GC-011 is proposed as the form to be used for this purpose.

Item 1 of this form would call for the attorney to certify whether he or she has had State Bar discipline imposed, and item 2 would inquire into changes in professional liability insurance or self-insurance coverage, in each case since the date of the attorney's qualification certification or last annual certificate. These items are tied to the changes in rule 7.1101(h) noted above.

² See paragraph 7.1101(h)(3) of the proposed amended rule, a new provision.

³ See rule 7.1101(f) and (h). The education requirement is three hours of education that qualifies for State Bar-required Minimum Continuing Legal Education (MCLE) for a specialist in estate planning, trust, and probate law. The certification must be filed before the end of March of the year following completion of the education. Rule 7.1101(f) would be amended in this proposal to refer correctly to the State Bar's MCLE program for this specialty. The proposed amendment makes no substantive change in the subdivision.

Form GC-010

Existing form GC-010 would be modified as follows:

1. The unclear “yes/no” choice in item 3a on page 1 would be replaced with a requirement to place initials at the end of the item, which must be answered affirmatively for the attorney to qualify for appointment.
2. Item 3a would be revised to delete a reference to a pending State Bar disciplinary matter, to conform the certificate to the proposed amended rule 7.1101(b).
3. The option of not being covered by professional liability insurance in items 3d, 4c, and 5b, and 5c on pages 2 and 3 would be eliminated. The absence of coverage would bar the attorney’s qualification for appointment under the rule so only one answer to these items is possible (except for the self-insurance option for small courts). The latter option would be addressed in revised items 3d(2) and 5(c)(2) of the form. Item 3d(2) would apply to attorneys in private practice who qualify under the rule except for the insurance requirement. Item 5(c)(2) would apply to those attorneys in private practice seeking an appointment by a small court under a waiver because they do not otherwise qualify under rule 7.1101(b) and items 3(a)–(c) of form GC-010.
4. The administrative file number on page 1 and a file number at the top of each subsequent page of the form would be eliminated. The advisory committee understands that many courts do not use file numbers for records concerning appointed counsel.

Alternative Actions Considered

The advisory committee initially prepared this proposal for the limited purpose of proposing the adoption of form GC-011 for reporting an attorney’s completion of continuing education required by rule 7.1101. It became clear during this process, however, that the rule should be amended and form GC-010 should be revised to address an attorney’s possible loss of eligibility for appointments because of changes in his or her State Bar disciplinary history or professional liability insurance coverage after initial qualification. For the same reason, form GC-011 was redesigned to become an annual certificate to show continued eligibility, not merely a yearly report on continuing education.

The change proposed in rule 7.1101(e) to provide an exemption from the professional liability insurance requirement for appointed private counsel in small courts is a response to comments received on the original proposal. The advisory committee also considered an expansion of the definition of a small court from four or fewer to eight or fewer authorized judges for all purposes under the rule—the liability insurance exemption and also the exemption from the rule’s other qualification requirements on waiver under existing rule 7.1101(e)(1) and

amended paragraph (e)(4). This change would bring the small-court definition into conformity with the definition of a small court for purposes of the exemption for qualifications of court probate staff under rule 10.777(e).

The committee decided to retain the four-judge definition for these purposes at this time because of its desire that conservatees and wards be protected by insurance coverage for the professional negligence of appointed counsel in all but the smallest rural-county courts, where the insurance requirement would be most likely to affect the court's ability to find qualified counsel. The committee also concluded that a change in the definition of a small court for all purposes would require circulation for public comment and thus could not be accomplished during the current rules adoption cycle. The committee decided to proceed with the proposal without this change. However, the committee intends to reconsider this issue for its Judicial Council-requested report to the Trial Court Presiding Judges Advisory Committee next year on the impact of rule 7.1101 and the other rules adopted by the council in 2007 affecting court administration of probate matters.⁴

Comments From Interested Parties

This proposal was circulated for comment to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, court self-help center representatives, 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.

Twelve comments were received. A chart showing the comments received and the advisory committee's responses is attached at pages 16–24. All commentators supported the proposal circulated for comment but six of them conditioned their approval on additional modifications.

Judge Mary Ann Grilli of the Superior Court of Santa Clara County commented that amended rule 7.1101(h)(3), which would require counsel to advise the court of the imposition of any State Bar discipline, is confusing because it would apply to attorneys eligible for appointments even though they are not seeking appointments at a particular time. Unless an attorney is seeking an appointment, he or she should not be required to report this information.

The advisory committee believes that an attorney who has completed and submitted the qualification statement indicates his or her willingness to accept appointments in the future. So long as the attorney desires to be retained on the court's list of eligible attorneys, he or she should be required to report the required

⁴ Rules 10.468, 10.478, and 10.776–10.777.

information whether or not he or she is actively seeking an appointment at any particular time.

The Trusts and Estates Section of the State Bar recommended deletion of the requirement that the attorney completing form GC-010 initial the statement in item 3a that he or she has had no State Bar discipline imposed within the previous 12 months.⁵ The advisory committee elected to retain the requirement. Item 3a does not have a check box because only a positive answer to the question can be given in order for an attorney to qualify for appointment. The affirmative requirement to initial the response to the item is proposed to ensure that the applicant makes the statement intentionally.

A recurring comment recommended a self-insurance alternative to professional liability insurance—or judicial discretion to waive the requirement, particularly for smaller courts. This comment, in various forms, was made by Presiding Judge Suzanne N. Kingsbury of the Superior Court of El Dorado County; Ms. Tracy Splitgerber, a court staff research attorney from the Superior Court of Santa Barbara County; Ms. Mary Beth Todd, the Court Executive Officer of the Superior Court of Calaveras County; and the Trial Court Presiding Judges and Court Executives Advisory Committees Joint Rules Working Group.

The advisory committee agrees with these comments and has revised the rule to permit small courts, defined in rule 7.1101(e)(1) as those with four or fewer authorized judges, to appoint an attorney in private practice who does not have the minimum liability insurance coverage required by the rule if he or she demonstrates adequate self-insurance.⁶

The rule currently permits a small court to waive qualification requirements other than insurance if the court cannot find qualified counsel or for other grounds of hardship. The amended rule would permit a small court to appoint an adequately self-insured attorney in private practice without having to make an express waiver under the rule. The requirements of the rule for deputy public defenders to be covered by county self-insurance programs would remain unchanged.

⁵ When this proposal was circulated for public comment, item 3a also called for the attorney to state that there is no State Bar disciplinary proceeding pending. The advisory committee has deleted this requirement. See the first full paragraph on page 3 above.

⁶ Rule 10.777, concerning the qualifications of probate court staff, was adopted by the council effective January 1, 2008. Rule 10.777(e) defines a small court, for the purposes of the small-court exemption provided in that rule for court staff qualifications, as a court with *eight* or fewer authorized judges. As noted above under Alternative Actions Considered, the advisory committee will consider amending rule 7.1101 to conform the definition of a small court in rule 7.1101(e)(1) to the definition contained in rule 10.777(e) when the committee reports to the Trial Court Presiding Judges Advisory Committee next year on the impact on the courts of rules 7.1101, 10.468, 10.478, and 10.777–10.777.

Judge Kingsbury pointed out in her comment that rule 5.242, adopted by the Judicial Council effective January 1, 2008, prescribes the qualifications of counsel appointed by courts to represent children in custody proceedings under the Family Code. Rule 5.242(b)(2) permits courts (of all sizes) to appoint uninsured counsel in these cases who demonstrate adequate self-insurance. The rule also does not specify a minimum level of insurance coverage or self-insurance.

The advisory committee determined that a difference in treatment of professional liability insurance in rules 5.242 and 7.1101 is justified. In the committee's view, attorneys representing wards or conservatees have greater exposure to financial loss for professional negligence than attorneys representing minor children in custody disputes between divorcing parents because guardianships and conservatorships may involve large estates and complex asset-management issues, and conservatorships may present estate-planning questions that could expose conservatees' attorneys to liability to disappointed beneficiaries of conservatees.

Implementation Requirements and Costs

This proposal would result in the ordinary expenses associated with the amendment of a rule of court, the revision of a Judicial Council form, and the adoption of a new form. Attorneys seeking court appointments and those already eligible for appointment would incur additional compliance costs. Courts may incur additional recruitment costs if they experience difficulty in recruiting attorneys qualified under rule 7.1101 for appointment in guardianships or conservatorships.

Attachments

Rule 7.1101 of the California Rules of Court is amended, effective January 1, 2009, to read:

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

4
5 **(a) Definitions**

6
7 As used in this rule, the following terms have the meanings stated below:

8
9 (1)–(6) * * *

10
11 (7) “Counsel in private practice” includes attorneys employed by or
12 performing services under contracts with nonprofit organizations.

13
14 **(b) Qualifications of appointed counsel in private practice**

15
16 Except as provided in this rule, each counsel in private practice appointed by
17 the court on or after January 1, 2008, must be an active member of the State
18 Bar of California for at least three years immediately before the date of
19 appointment, with no ~~disciplinary proceedings pending and no~~ discipline
20 imposed within the 12 months immediately preceding ~~the~~ any date of ~~first~~
21 availability for appointment after January 1, 2008; and

22
23 (1)–(2) * * *

24
25 (3) Except as provided in (e)(2), private counsel qualified under (1) or (2)
26 must also be covered by professional liability insurance satisfactory to
27 the court in the amount of at least \$100,000 per claim and \$300,000 per
28 year.

29
30 **(c)–(d)** * * *

31
32 **(e) Exemption for small courts**

33
34 (1) Except as provided in (2) and (3), the qualifications required under (b)
35 or (c) may be waived by a court with four or fewer authorized judges if
36 it cannot find qualified counsel or for other grounds of hardship.

37
38 (2) A court described in (1) may, without a waiver, appoint counsel in
39 private practice who do not satisfy the insurance requirements of (b)(3)

1 if counsel demonstrate to the court that they are adequately self-
2 insured.

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

6
7 ~~(3)~~(4) A court waiving the qualifications required under (b) or (c) must
8 make express written findings showing the circumstances supporting
9 the waiver and disclosing all alternatives considered, including
10 appointment of qualified counsel from adjacent counties and other
11 alternatives not selected.

12
13 (f) **Continuing education of appointed counsel**

14
15 Beginning on January 1, 2008, counsel appointed by the court must complete
16 three hours of education each calendar year that qualifies for ~~mandatory~~
17 Minimum Continuing Legal Education credit for State Bar-certified
18 specialists in estate planning, trust, and probate law.

19
20 (g) * * *

21
22 (h) **Initial certification of qualifications; and annual post-qualification**
23 **reports and certifications continuing education**

24
25 (1)-(2) * * *

26
27 (3) Each counsel appointed or eligible for appointment by the court under
28 this rule must immediately advise the court of the imposition of any
29 State Bar discipline.

30
31 ~~(3)~~(4) Beginning in 2009, each appointed counsel must certify to the
32 court before the end of March of each year that:

33
34 (A) His or her history of State Bar discipline and professional liability
35 insurance coverage or, if appointed by a court with four or fewer
36 authorized judges under (e)(2), the adequacy of his or her self-
37 insurance, either has or has not changed since the date of his or
38 her qualification certification or last annual certification; and

39
40 (B) He or she has completed the continuing education required for the
41 preceding calendar year.

1
2
3
4
5
6
7
8
9
10

(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.

~~(4)~~(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) * * *

<p>SUPERIOR COURT OF CALIFORNIA,</p> <p>COUNTY OF</p> <p>STREET ADDRESS:</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE:</p>	<p><i>(Do not file or lodge in case file)</i></p>
<p>CERTIFYING ATTORNEY</p> <p><i>(Name):</i></p>	<p>State Bar No.:</p>

CERTIFICATION OF ATTORNEY CONCERNING QUALIFICATIONS FOR COURT APPOINTMENT IN
 CONSERVATORSHIPS **GUARDIANSHIPS**

NOTICE TO ATTORNEYS:

1. If you were appointed by the court in a conservatorship or guardianship matter that is pending on April 1, 2008, or if you are a deputy public defender with direct responsibility for the performance of legal services on the appointment of a county's public defender in such a matter, you must certify on or before that date that you are qualified for the appointment under rule 7.1101(b) or 7.1101(c) of the California Rules of Court.
2. On or after April 1, 2008, you must certify to the court that you are qualified under rule 7.1101(b) or 7.1101(c) before you may be appointed by the court, or may be placed in direct responsibility for the performance of legal services on appointment of a county's public defender, in a conservatorship or guardianship matter.
3. Under certain circumstances, courts with four or fewer authorized judges may waive the qualifications for appointed counsel under rule 7.1101. Such courts may also, without an express waiver, appoint private counsel who are not insured if counsel demonstrate that they are adequately self-insured. (See rule 7.1101(e).)

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

1. I was admitted to the State Bar of California on *(date)*: _____ . I am currently an active member.
2. My contact information is as follows:
 - a. Firm or employer name:

 - b. Address:

 - c. Telephone number: _____ d. Fax number: _____
 - e. E-mail address: _____
3. I am an attorney in private practice.
 - a. As of the date of this certification, I have had no discipline imposed by the State Bar of California within the 12-month period immediately preceding that date. *(Initial here)*: _____
 - b. I am qualified to accept appointments by the court to represent minors in probate guardianships under Probate Code section 1470 under rule 7.1101(b)(1) of the California Rules of Court, in that:
 - (1) Within the five years immediately before the date of this certificate, I 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 child custody proceedings under the Family Code; or
 - (2) I am qualified for appointment to represent children in juvenile dependency proceedings under local court rules required by rule 5.660 of the California Rules of Court; or
 - (3) I am qualified for appointment to represent children in custody proceedings under the Family Code under rule 5.242 of the California Rules of Court.

CERTIFICATION OF ATTORNEY *(Name):*

CONCERNING QUALIFICATIONS FOR APPOINTMENT IN **CONSERVATORSHIPS** **GUARDIANSHIPS**

3. *(cont.)* c. I am qualified to accept appointments by the court to represent conservatees or proposed conservatees under Probate Code sections 1470 or 1471 under rule 7.1101(b)(2) of the California Rules of Court, in that, within the five years immediately before the date of this certificate:
- (1) I have represented at least three conservatees or proposed conservatees in probate or Lanterman-Petris-Short Act conservatorship proceedings; or
 - (2) I have completed at least three of the following five tasks:
 - (A) Represented probate conservatorship petitioners at commencement of three probate conservatorship proceedings, from initial contact with the petitioner through the appointment hearing and issuance of Letters of Conservatorship;
 - (B) Represented a petitioner, a conservatee or a proposed conservatee, or an interested third party, in two contested probate or Lanterman-Petris-Short Act conservatorship matters *(a contested matter that qualifies under items (A) and (B) may be applied to both items)*;
 - (C) Represented a party for whom a court could appoint counsel in a total of three matters under Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
 - (D) Represented fiduciaries in three cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedents' estates, or trust proceedings under division 9 of the Probate Code; or
 - (E) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management.
- d. *(Choose item d(1) or d(2). If you check item d(2) and are otherwise qualified under items 3a–c, you do not also need to complete item 5.)*
- (1) I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year. My insurer is *(specify)*:
 - (2) I wish to be considered for appointment by a court with four or fewer authorized judges. I am not covered by professional liability insurance in at least the minimum amounts stated in (1), but I believe that I would be adequately self-insured against any damage claim arising from my representation of any person on appointment of the court under Probate Code sections 1470–1472 and rule 7.1101. Facts supporting my belief are specified in Attachment 3d(2).
- e. I will, if requested, provide the case names and numbers, courts, and parties I represented in the court proceedings identified above and, if item 3c(2)(E) is checked, redacted copies of the estate planning documents prepared.
4. I am a deputy public defender of *(name of county)*:
- a. I would be directly responsible for performing legal services for minors in probate guardianships on the appointment of my county's public defender under Probate Code section 1470. I certify that I am qualified to perform those services under rule 7.1101(c)(1) of the California Rules of Court, in that:
 - (1) I satisfy the experience requirements for attorneys in private practice for appointment to represent minors in probate guardianships identified in item 3b above, as shown by the boxes checked in that item *(check the box for item 3b above and as many of the boxes for items 3b(1), 3b(2), or 3b(3) as apply to you, but do not check the box for item 3)*; or
 - (2) I have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or patients, proposed conservatees, or conservatees in postcertification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act.
 - b. I would be directly responsible for performing legal services for conservatees or proposed conservatees in probate conservatorships on the appointment of my county's public defender under Probate Code sections 1470 and 1471. I certify that I am qualified to perform those services under rule 7.1101(c)(1) of the California Rules of Court, in that:

CERTIFICATION OF ATTORNEY *(Name):*

CONCERNING QUALIFICATIONS FOR APPOINTMENT IN **CONSERVATORSHIPS** **GUARDIANSHIPS**

4. *(cont.)* b. (1) I satisfy the experience requirements for attorneys in private practice for appointment to represent conservatees or proposed conservatees in probate conservatorships identified in item 3c above, as shown by the boxes checked in that item *(check the box for item 3c above and as many of the boxes for items 3c(1) and 3c(2)(A)–(E) as apply to you, but do not check the box for item 3);* or
- (2) I have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or patients, proposed conservatees, or conservatees in postcertification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act.
- c. I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or at an equivalent level by a self-insurance program for the professional employees of my county. My insurer or self-insurance program is *(specify):*
- d. I will, if requested, provide the case names and numbers, courts, and parties I represented in the court proceedings identified in item 3 above, if any, and, if item 3c(2)(E) is checked, redacted copies of the estate planning documents prepared.
5. *(Complete this item if you do not qualify for appointment under items 3 or 4 above but wish to be considered for an appointment in a conservatorship or guardianship by a court with four or fewer authorized judges under rule 7.1101(e) of the California Rules of Court. If you qualify for appointment under items 3a–c but are not covered by professional liability insurance in the minimum amounts specified in item 3d(1), do not complete this item but complete item 3d(2).)*
- a. I wish to be considered by the court for appointment as legal counsel in conservatorships guardianships on a waiver under rule 7.1101(e) of the California Rules of Court.
- b. I am an attorney in private practice.
- (1) Facts supporting my appointment are stated in attachment 5 to this certification. I certify that the facts stated are true and correct.
- (2) I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year. My insurer is *(specify):*
- (3) I am not covered by professional liability insurance in at least the minimum amounts stated in (2), but I believe that I would be adequately self-insured against any damage claim arising from my representation of any person on appointment of the court under Probate Code sections 1470–1472 and rule 7.1101. Facts supporting my belief are specified in Attachment 5b(3).
- c. I am a deputy public defender who would be responsible for performing legal services on the appointment of my county's public defender.
- (1) Facts supporting my appointment are stated in attachment 5 to this certification. I certify that the facts stated are true and correct.
- (2) I am covered by professional liability insurance in the amount of at least \$100,000 per claim and \$300,000 per year or at an equivalent level by a self-insurance program for the professional employees of my county. My insurer or self-insurance program is *(specify):*
6. Additional information required by the court is provided in attachment 6. is submitted separately with this certification. is as follows:

Additional space provided and signature required on next page.

CERTIFICATION OF ATTORNEY *(Name):*

CONCERNING QUALIFICATIONS FOR APPOINTMENT IN **CONSERVATORSHIPS** **GUARDIANSHIPS**

6. *(cont.)* Additional information required by the court :

I certify that the foregoing, including statements made in all attachments and other documents submitted with this certification, is true and correct.

Dated:

(TYPE OR PRINT NAME OF CERTIFYING ATTORNEY)

 _____
(SIGNATURE)

SPR08-43**Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees**

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
1.	Hon. Mary Ann Grilli Judge of the Superior Court of Santa Clara County San Jose	AM	Rule 7.1101(h)(3) may cause some confusion. It requires attorneys who are eligible for appointment to report certain information. If an attorney is not seeking such appointments, but is otherwise eligible, they should not be required to report. I suggest that this provision should be reworded to account for this issue.	<p>The advisory committee does not think the rule would be confusing on the point raised by Judge Grilli.. An attorney eligible for appointment under the rule is an attorney who has completed and submitted the qualification statement, thus indicating his or her willingness to accept appointments in the future. So long as the attorney desires to remain eligible for appointment, whether or not he or she is actively seeking an appointment at any point in time, he or she should be required to report the required information.</p> <p>This provision is intended to ensure that the attorney remains qualified under the rule at all times after filing the qualification statement, whether or not he or she has yet been appointed.</p>
2.	Hon. Suzanne N. Kingsbury Presiding Judge of the Superior Court of El Dorado County South Lake Tahoe	AM	As a long time presiding judge in a rural court with nine bench officers, and as the recent chair of the Judicial Council's Rules and Projects Committee, I have some concerns about the viability of this proposal in all courts but most particularly smaller courts. We have a very limited number of attorneys who practice this specialty. Many of those attorneys are in the latter part of their careers and are scaling down their practice by only working part time. They may not carry professional liability insurance at the limits required by rule 7.1101 and set forth	<p>The advisory committee agrees that an accommodation should be made to small courts, currently defined in rule 7.1101(e)(1) as those with four or fewer authorized judges. Therefore, the advisory committee has revised rule 7.1101(e) to permit such courts to appoint private counsel who do not satisfy the professional liability insurance requirements if counsel demonstrate that they are adequately self-insured.</p> <p>In response to this comment, the advisory committee considered modifying the rule to</p>

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

SPR08-43

Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
			in item 3d on page 2 of Form GC-010. In some instances the attorney owns sufficient assets to self-insure. In other instances, he or she may be able to provide information to the court on which the bench officer could make a determination that a lower limit would be sufficient in a particular case.	define a small court for all purposes under the rule—exemption from the liability insurance requirements without a waiver and exemption from other qualifications on an express waiver—as a court with eight or fewer rather than four or fewer authorized judges. The committee decided not to make this change at this time for the following reasons: 1. This change, not part of the original proposal and not suggested in the Invitation to Comment on the proposal, would require recirculation for comment, so it cannot be offered as part of the proposal at this time; 2. The rest of the current proposal should go forward without delay; and 3. Courts’ experience with this rule, adopted effective only this past January and modified in minor respects in this proposal, should be learned and evaluated before additional changes are made. The Judicial Council directed the advisory committee to report to the Trial Court Presiding Judges Advisory Committee concerning the impact on courts, particularly small courts, of the rules of court adopted in 2007 in response to the Omnibus Conservatorship and Guardianship and

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

SPR08-43

Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>It would seem that for purposes of both internal consistency within the rules, as well as practicality, that the rule here should be the same as that set forth in CRC 5.242(b)(2) relating to qualifications for appointment as minor's counsel in a family law proceeding. There does not seem to be a reason for requiring different qualifications for counsel in these two case types. In appropriate cases, the probate court could independently assess the adequacy of the liability insurance or self insurance to insure that the client is protected.</p>	<p>Reform Act of 2006, including rule 7.1101. The committee will consider a modification of the definition of a small court and other changes in the rule based on its review and report to the presiding judges.</p> <p>Rule 5.242, adopted by the Judicial Council effective January 1, 2008, now governs qualifications and responsibilities of counsel appointed by courts to represent children in family law custody proceedings under Family Code sections 3150–3153. Rule 5.242(b)(2) provides that an appointed attorney must have professional liability insurance (in an unspecified amount) “or demonstrate to the court that he or she is adequately self-insured.”</p> <p>The advisory committee believes that the liability of appointed counsel in guardianships and conservatorships for professional negligence is potentially greater than such liability for representing children in family law custody disputes between their parents, in which financial issues are not directly involved. Both guardianships and conservatorships may involve issues of estate management after appointment of the fiduciary, and conservatorships may present acute medical issues, care and placement decisions, and possibly claims of disappointed heirs or beneficiaries of conservatees for estate</p>

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

SPR08-43

Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>I believe that the Judicial Council, in its role as the rule making body of California’s court system, should strive for internal consistency among similar rules for particular subject matters, unless there is a policy reason for the distinction. In this case, it doesn't appear that such a reason exists. Therefore, I would urge the Probate and Mental Health Advisory Committee, RUPRO and the Judicial Council to modify the rule and form to be consistent with previously adopted CRC 5.242(b)(2).</p>	<p>planning errors of conservators and their counsel, and counsel for conservatees. For this reason, the advisory committee believes that the current levels of professional liability insurance required under rule 7.1101(b)(3) (\$100,000 per claim and \$300,000 per year) should be maintained. The differences between the attorney’s role in guardianships and conservatorships on the one hand and in family law custody disputes on the other support this distinction between rules 5.242 and 7.1101.</p> <p>The advisory committee generally agrees with this comment. It believes, however, for the reasons stated above, that differences between family law custody matters and guardianships and conservatorships support the proposed difference in treatment of the insurance issue. The committee also notes that another recently amended rule of court concerning counsel appointed for children in juvenile court matters is inconsistent with rule 5.242 on this issue, in that the juvenile court rule does not require appointed counsel to maintain any professional liability insurance or meet a self-insurance alternative standard. See rule 5.660, as amended effective January 1, 2007 (formerly rule 1438, adopted effective January 1, 1996, and previously amended in 1999, 2001, 2003, 2005, and 2006).</p>

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

SPR08-43**Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees**

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
3.	Ms. Patricia Lewin Supervisor Civil Division Superior Court of Sonoma County Santa Rosa	A	Agree with proposed changes.	No response necessary.
4.	Orange County Bar Association Ms. Cathrine Castaldi President Newport Beach	A	Agree with proposed changes.	No response necessary.
5.	Ms. Tracy Splitgerber Research Attorney Superior Court of Santa Barbara County Santa Maria	AM	<p>Our court is divided into two divisions: North County (Santa Maria) and South County (Santa Barbara), located about an hour’s drive apart. I work in the Santa Maria branch. On March 17, 2008, we distributed Judicial Council form GC-010 to attorneys who have accepted appointments in conservatorships in the past. One attorney has been our most frequent appointee. He is one of our most distinguished practitioners. Last summer, he assisted me in teaching a class about the conduct of court-appointed counsel in conservatorship proceedings.</p> <p>This attorney’s certification states that he is not covered by professional liability insurance but that “[my] professional law corporation has filed a guarantee with the State Bar [under the State Bar’s Law Corporation Rules].”</p>	See the response to the comments of Judge Suzanne N. Kingsbury above.

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

SPR08-43

Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>Without the ability to appoint this practitioner, this court would truly be in a bind, as there are only two other attorneys in the North County division who have qualified under the new rule of court.</p> <p>I recommend that the State Bar-mandated guarantee of a professional corporation should be an acceptable alternative to professional liability insurance.</p>	<p>The State Bar Act and the State Bar professional corporation rules require professional law corporations to obtain certificates of registration from the State Bar. A requirement for the certification (for law corporations applying on or after October 27, 1971) is a written agreement by all shareholders to guarantee payment of claims of clients in an amount for each claim of at least \$50,000 with an aggregate maximum liability of \$100,000 per year (multiplied by the number of the corporation’s employees practicing law), less the amount of insurance coverage for the corporation or its shareholders. (See rules IVB(3) and IVB(1)(c), Law Corporation Rules of the State Bar.)</p> <p>Neither the State Bar Act, nor the Rules of Professional Conduct, nor the Law Corporation Rules require a licensed member or law corporation shareholder to maintain a certain financial ability to respond to a damage claim. Therefore, incorporation of those rules into this rule would add nothing to the proposal outlined</p>

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

SPR08-43**Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees**

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
				above, in which the judge in a smaller court could consider adequate self-insurance in lieu of liability insurance, whether or not the appointed counsel is part of a professional corporation.
6.	Staff Counsel Services and Self-Help Division Superior Court of San Bernardino County San Bernardino	A	Agree with proposed changes	No response necessary.
7.	Superior Court of Los Angeles County Los Angeles	AM	The title of form GC-011 is incomplete. The certification concerns other matters in addition to continuing education.	The advisory committee agrees with this comment and has changed the title of the form to <i>Annual Certification of Court-Appointed Attorney</i> . The committee has also revised the text of the “Notice” box to refer to the new requirement of updated disciplinary and insurance/self-insurance information.
8.	Superior Court of Sacramento County Mr. Ed Pollard Chief Deputy Court Executive Officer Sacramento	A	We agree with this proposal as written.	No response necessary.
9.	Superior Court of San Diego County Mr. Michael M. Roddy Court Executive Officer San Diego	A	Agree with proposed changes.	No response necessary.
10.	Ms. Mary Beth Todd Court Executive Officer Superior Court of Calaveras County	AM	Agree with proposed changes if modified. Request that some exception to the requirement	See discussion above in response to the

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

SPR08-43**Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees**

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
	San Andreas		for professional liability insurance coverage be provided. In our small county, we have very few attorneys available for these appointments. Most do not carry professional liability insurance. There would not be a sufficient number of appointments in these case types to justify the expense of this coverage in order to qualify as appointed counsel.	comments of Judge Suzanne N. Kingsbury and Ms. Tracy Splitgerber.
11.	Trial Court Presiding Judges Advisory Committee (TCPJAC)/Court Executives Advisory Committee (CEAC) Joint Rules Working Group Mr. Patrick Danna AOC Court Services Analyst, Lead Staff	A	The Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee Joint Rules Working Group commented on an earlier version of rule 7.1101 before its adoption effective January 2008. The Joint Rules Working Group's only comment is to highlight the possible issue of insurance coverage requirements for appointed attorneys, and whether the required liability insurance amounts are feasible for local attorneys in rural areas that do not handle guardianship and conservatorship cases very often. Smaller/rural courts or all courts should be able to appoint uninsured attorneys who are equivalently or adequately self-insured.	See responses to above comments of Judge Suzanne N. Kingsbury, Ms. Tracy Splitgerber, and Ms. Mary Beth Todd. In response to a directive from the Judicial Council, the advisory committee will study the impact of this rule and the other court administration rules affecting probate matters adopted last year (rules 10.468, 10.478, and 10.776–10.777), and will report its findings to the TCPJAC next year. The committee will specifically consider and make recommendations concerning whether changes in the small-court exemption generally or in the liability insurance requirements for private appointed counsel specifically are appropriate.

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

SPR08-43

Probate—Guardianships and Conservatorships: Appointed Counsel for Wards and Conservatees

(amend Cal. Rules of Court, rule 7.1101, revise form GC-010, adopt form GC-011)

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

	Commentator	Position	Comment	Advisory Committee Response
12.	Trusts and Estates Section State Bar of California Mr. Edward J. Corey, Jr., Advisor Sacramento	AM	<p>Agree with proposed changes if modified.</p> <p>Delete the “Please initial here ____.” Requirement. This is unnecessary and generally sets a bad precedent.</p> <p>DISCLAIMER This position is only that of the TRUSTS & ESTATES SECTION of the State Bar of California. This position has not been adopted by either the State Bar’s Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.</p>	<p>Item 3a of form GC-010, which calls for the applicant to state that he or she has had no State Bar discipline imposed within the last 12 months, does not have a check box because only a positive answer to the question can be given in order for an attorney to qualify for appointment. The extra step of initialing the response to the item is proposed to ensure that the applicant makes the statement intentionally.</p>

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