

**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: October 1, 2007

SUBJECT: Probate: Qualifications for Membership in the Probate and Mental Health Advisory Committee (amend Cal. Rules of Court, rule 10.44) (Action Required)

Issue Statement

Rule 10.44 of the California Rules of Court prescribes the responsibilities of the Probate and Mental Health Advisory Committee. Subdivision (c) of the rule defines the qualifications for committee membership and requires that the membership of the committee must always include at least one representative from each category. There are five membership categories. One category places probate court staff attorneys, examiners, and court investigators together. Another category combines persons knowledgeable in mental health, developmental disabilities, and private management of probate matters.

Recommendation

The Probate and Mental Health Advisory Committee recommends that rule 10.44(c) be amended to:

1. Create a membership category for court investigators separate from the court staff positions of examiner and probate attorney;
2. Separate the membership category of persons knowledgeable in mental health or developmental disabilities and private manager of probate matters into two categories; and

3. Modify the latter categories to provide that knowledge in mental health and developmental disabilities refers to knowledge of the law pertaining to these fields and to clarify that private management of probate matters refers to management in a fiduciary capacity.

The text of proposed amended rule 10.44 follows this report, at pages 5 and 6.

Rationale for Recommendation

Rule 10.44(c) features five membership categories, each of which must be represented in advisory committee membership at all times. One category combines probate court staff attorneys, examiners, and court investigators. Another combines persons knowledgeable in mental health, developmental disabilities, and private management of probate matters. (See rules 10.44(c)(3) and (4).)

The combination of different professional perspectives into single membership categories results in under representation of some elements of these categories. For example, the committee in recent years has had several members who are probate staff attorneys or examiners, resulting in the elimination or reduction of participation by probate court investigators. Similarly, the single membership category of persons knowledgeable in mental health, developmental disabilities, or private management of probate matters tends to be represented primarily by private professional fiduciaries, leaving a shortage of members with experience concerning mental health or developmental disabilities issues.

Recent legislation has greatly changed and expanded the role of court investigators in conservatorship matters.¹ At this time and for the next several years—while the advisory committee works on projects to implement the legislation, including new programs for the initial and continuing education of court investigators—the committee particularly needs contributions from this important profession.

The rule would also be amended to separate the private manager of probate matters from persons knowledgeable in mental health or developmental disabilities, in order to provide greater emphasis on mental health and developmental disability issues within the committee's purview. The category of persons knowledgeable in mental health or developmental disability issues would also be modified to emphasize that the knowledge should be of the law pertaining to these areas. The committee's focus in the mental health field is primarily on the Lanterman-Petris-Short Act (Welf. & Inst. Code, § 5000, et seq.), principally the

¹ See the Omnibus Conservatorship and Guardianship Reform Act of 2006, Stats. 2006, ch. 490–493, particularly, ch. 493 (Assembly Bill 1363).

provisions governing the conservatorship of persons gravely disabled as the result of mental illness or chronic alcoholism (Welf. & Inst. Code, §§ 5350–5371). The committee’s interest in developmental disability issues concerns limited probate conservatorships for persons with developmental disabilities (see Probate Code section 1828.5). An increased focus on recruitment and participation of committee members with expertise in these areas is necessary to enhance the committee’s ability to devote more attention to them in the future.

The proposed modification of the membership category of private manager of probate matters would make explicit what has always been implicit concerning this category: private management of probate matters means management in a fiduciary capacity.

Private professional fiduciaries, members of a relatively new profession, have rapidly become important participants in matters under the jurisdiction of the probate departments of California courts. These professionals will face new challenges as they come under the regulation of an entirely new licensing agency in the Department of Consumer Affairs in 2008.² Those challenges will directly affect the courts that will continue to supervise these professionals in individual matters. This proposed amendment would encourage and emphasize the continued participation of private fiduciaries in advisory committee activities.

Alternative Actions Considered

The committee could have left its governing rule unchanged and merely changed its current recruiting priorities to attract more candidates from under represented membership categories. The committee decided instead to amend rule 10.44 to clarify its membership priorities and to expressly address its long-term membership needs. These changes will assist future committees in the recruitment of members with new and different, and vitally important, professional perspectives.

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, and

² See the Professional Fiduciaries Act, chapter 6, division 3 of the Business and Professions Code, commencing with section 6500. This legislation, Stats. 2006, ch. 491 (Senate Bill 1550), was part of the Omnibus Act referred to in footnote 1. The licensure provisions of SB 1550 will become effective on July 1, 2008. These provisions will replace the local-statement-filing and Statewide Registry requirements of the Probate Code and the qualification and continuing education requirements of rules 7.1010 and 7.1060 of the California Rules of Court, now applicable to private professional guardians and conservators. See Business and Professions Code section 6502 and Probate Code sections 2340–2341, added by sections 3 and 4 of SB 1550.

probate-interest sections of the State Bar and local bar associations, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Attached at pages 7–11 is a comment chart showing the public comments received and the advisory committee’s responses. Five comments were received. Four commentators agreed with the proposal without modifications or further comment. The director of the Los Angeles County Department of Mental Health, who is also Los Angeles County’s Public Guardian, agreed with the proposal but recommended a modification that would require committee membership to include three public conservators, of which one would at all times be from the Los Angeles County Public Conservators’ Program, part of the commentator’s department.

The committee declined to amend the proposed rule in response to this comment. It advised the commentator that it would not recommend revision of rule 10.44 to require three public fiduciary members and one member from Los Angeles County or from any other specific county’s public guardian or conservator. Under the current and amended rule, the committee could have more than one public fiduciary member at any time so long as all of the other membership categories are also represented on the committee.³ If representatives of Los Angeles County’s Public Guardian, including representatives of its Public Conservator’s Program, desire to participate, they would certainly have the opportunity to be considered for committee membership.

Implementation Requirements and Costs

This proposed amendment will incur the normal costs associated with the amendment of a California Rule of Court governing a Judicial Council advisory committee. There should be no increased costs to the courts. The currently authorized number of members of the Probate and Mental Health Advisory Committee would not be changed by this proposal, so no increase is expected in the operating expenses of the advisory committee.

Attachments

³ Current rule 10.44(c)(5), unchanged by this proposal other than renumbering as rule 10.44(c)(7), requires at least one committee member who is a county counsel, public guardian, or other similar public officer familiar with guardianship, and conservatorship issues. This membership category would clearly include a representative from Los Angeles County’s Public Conservator Program. The committee will actively recruit representatives of this program under this category or as persons knowledgeable in mental health or developmental disability law under amended rule 10.44(c)(5).

Rule 10.44 of the California Rules of Court is amended, effective January 1, 2008, to read:

1 **Rule 10.44. Probate and Mental Health Advisory Committee**

2
3 **(a) Area of focus**

4
5 The committee makes recommendations to the council for improving the
6 administration of justice in proceedings involving:

- 7
8 (1) Decedents' estates, trusts, conservatorships, guardianships, and other
9 probate matters; and
10
11 (2) Mental health and developmental disabilities issues.

12
13 **(b) Additional duty**

14
15 The committee must coordinate activities and work with the Family and
16 Juvenile Law Advisory Committee in areas of common concern and interest.

17
18 **(c) Membership**

19
20 The committee must include at least one member from each of the following
21 categories:

- 22
23 (1) Judicial officer with experience in probate;
24
25 (2) Lawyer whose primary practice involves decedents' estates, trusts,
26 guardianships, conservatorships, or elder abuse law;
27
28 (3) ~~Lawyer, or examiner, or probate investigator~~ who works for the court
29 on probate or mental health matters;
30
31 (4) Investigator who works for the court to investigate probate
32 guardianships or conservatorships;
33
34 ~~(4)(5)~~ Person knowledgeable in mental health or developmental disabilities
35 disability law; or
36
37 (6) Person knowledgeable in private management of probate matters in a
38 fiduciary capacity; and
39

1 ~~(S)~~(7) County counsel, public guardian, or other similar public officer
2 familiar with guardianship and conservatorship issues.

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Probate and Mental Health: Qualifications for Membership in the Probate and Mental Health Advisory Committee
(amend rule 10.44 of the California Rules of Court)

| | Commentator | Position | Comment on behalf of group? | Comment | Committee Response |
|----|--|-----------------|------------------------------------|--|---------------------------|
| 1. | Ms. Grace Andres Court Services Program Manager Superior Court of Solano County Fairfield, California | A | N | Agree with proposed changes. | No response necessary. |
| 2. | Ms. Suzanna Gee Associate Managing Attorney Protection and Advocacy, Inc. Sacramento, California | A | Y | <p>Agree with proposed changes.</p> <p>This agency is in support of the proposed amendments to rule 10.44(c) of the California Rules of Court, which establish the membership categories of the Probate and Mental Health Advisory Committee. Specifically, this agency supports the provision of a single membership category for a person knowledgeable in mental health or developmental disability law.</p> <p>Protection and Advocacy, Inc. (PAI) is a federally mandated agency that protects and advocates for the rights of individuals with disabilities, which include individuals with mental health or developmental disabilities. Our advocacy services are statewide reaching clients who are in rural or urban areas of the state.</p> <p>PAI provides legislative advocacy and also represents individuals with disabilities in negotiations, mediation, administrative hearings, individual state court actions, and federal class actions.</p> | No response necessary. |

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|--|-------------|----------|-----------------------------|--|--------------------|
| | | | | <p>We are closely familiar with the Lanterman-Petris-Short Act (LPS) and the importance of ensuring that the rights of individuals with mental health needs who may be subject to a conservatorship are enforced. For example, there are instances when an LPS conservatorship should not be initiated or renewed because there is “third-party assistance” to challenge an assertion that “grave disability” exists of the proposed conservatee.</p> <p>Likewise, we have experience with limited probate conservatorships for individuals with developmental disabilities and the need to challenge or review the establishment when individuals may be able to live or make decisions independently.</p> <p>As noted in the Discussion section of the invitation to comment, PAI supports the statement that there has been an under-representation of specific membership categories on the advisory committee. By having a single membership category for an individual with knowledge of mental health or developmental disability law, there would be a representation of the interests of the individuals who would be affected by judicial proceedings.</p> | |

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|----|---|-----------------|------------------------------------|---|---------------------------|
| 3. | Superior Court of Los Angeles County Los Angeles, California | A | Y | Agree with proposed changes. | No response necessary. |
| 4. | Mr. Michael M. Roddy Executive Officer Superior Court of San Diego County San Diego, California | A | Y | Agree with proposed changes. | No response necessary. |
| 5. | Marvin J. Southard, D.S.W. Director, Los Angeles County Dept. of Mental Health Los Angeles, California | AM | Y | <p>As Director of the Los Angeles County Department of Mental Health, I am also the designated Public Guardian for Los Angeles County. Los Angeles County has the largest conservatorship/guardianship program in California, with 4,000 persons on conservatorship annually.</p> <p>The leadership team of our guardianship division has been professionally certified for more than 15 years and continues to participate in the California Public Administrator/Public Guardian/Public Conservator Association trainings twice a year. The leadership team is made up of professionals who have dedicated their entire careers to serving in this program and have a very wide breadth of knowledge that would be a great asset to the Judicial Council's Probate and Mental Health Advisory Committee. Their professional association had the first professional training program in the State of California to develop performance standards and proficiency training.</p> | |

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|--|-------------|----------|-----------------------------|--|---|
| | | | | <p>While I believe that there are many professionals who perform essential functions in the process of investigating, establishing, and successfully managing a conservatorship, I am not in agreement with your proposed composition of the Probate and Mental Health Advisory Committee. Private conservators generally handle cases where there are many financial assets, as do many public conservators; but there are many complex problems and processes that a conservator often faces, and I believe that public conservators have a great deal of expertise and knowledge in these areas.</p> <p>I agree with your proposed changes to the advisory committee if rule 10.44(c)(7) is amended to read that three public conservators be included in the membership of the advisory committee and that one of them be from the Los Angeles County program.</p> | <p>Paragraph (c)(7) of rule 10.44 (formerly paragraph (c)(5)) was not changed in this proposal, beyond renumbering. The advisory committee declines to recommend that the Judicial Council amend the rule to require three public fiduciary members and one member from Los Angeles County or any other specific county's public fiduciary. The advisory committee can have more than one public fiduciary member at any time so long as all of the other membership categories have at least one member, so if</p> |

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|--|--------------------|-----------------|------------------------------------|----------------|--|
| | | | | | representatives of Los Angeles County’s public fiduciary or any other county’s public fiduciary wish to participate, they would certainly have the opportunity to be considered. |