

**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 10, 2007

SUBJECT: Probate: Standards for the Conduct of Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber rule 7.756 of the California Rules of Court and adopt rules 7.756, 7.1009, and 7.1059) (Action Required)

Issue Statement

The Probate Code contains detailed provisions governing the duties and responsibilities of conservators and guardians of estates, and prescribes an overall standard for their exercise: ordinary care and diligence.<sup>1</sup> But these statutes do not provide guidelines for the proper conduct of these fiduciaries.

The Omnibus Conservatorship and Guardianship Reform Act of 2006 (the Omnibus Act) requires the Judicial Council to adopt a rule of court, effective on or before January 1, 2008, to provide these guidelines, referred to in the statute as “uniform standards of conduct,” specifically to include, at a minimum, standards for determining compensation that may be charged to conservatees or wards for asset management.<sup>2</sup>

---

<sup>1</sup> See Probate Code section 2401(a). The powers and duties of these fiduciaries are prescribed in chapter 6, part 4, division 4 of that code, sections 2400–2595.

<sup>2</sup> Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363). The direction to the Judicial Council is contained in new Probate Code section 2410, added by section 22 of chapter 493 (AB 1363). Section 2410 provides:

“On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, renumber rule 7.756 of the California Rules of Court as rule 7.776, adopt a new rule 7.756 to provide statewide standards for determining just and reasonable compensation for conservators and guardians from the estates of the persons in their care, and adopt rules 7.1009 and 7.1059 to establish standards for the conduct of guardians and conservators of estates, respectively.

The text of the proposed new and renumbered rules of court is attached at pages 7–13.

### Rationale for Recommendation

Proposed rules 7.756, 7.1009, and 7.1059 are the product of direct consultation between this advisory committee and representatives of the organizations mentioned in section 2410.

#### *Rule 7.756*

This rule would specify a nonexclusive list of factors courts may consider in determining just and reasonable compensation for conservators or guardians from the estates of their conservatees or wards. (See proposed rule 7.756(a).) The factors listed are modeled after those listed in current rule 7.756 (to be renumbered as rule 7.776 in this proposal), concerning court determination of just and reasonable compensation of trustees;<sup>3</sup> and rule 4-200(B) of the Rules of Professional Conduct of the State Bar, which lists factors to be considered in determining whether an attorney’s fee is prohibited as unconscionable. Additional factors are unique to conservatorships and guardianships.<sup>4</sup>

Subdivision (b) of the rule would provide that no single factor listed in the rule is to be exclusively determinative, and subdivision (c) would provide that the rule is

---

California, the National Guardianship Association, and the National Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under . . . [chapter 6] on behalf of conservatees and wards to ensure that the estate[s] of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.”

<sup>3</sup> Renumbered rule 7.776 is based on *Estate of Nazro* (1971) 15 Cal.App.3d 218, 221, and *Estate of McLaughlin* (1954) 43 Cal.2d 462, 467–468.

<sup>4</sup> See proposed rule 7.756(a)(1) and (4): (1) The size and nature of the conservatee’s or ward’s estate; and (4) The conservatee’s or ward’s anticipated future needs and income.

not authority for a court to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation.

*Rule 7.1059*

Rule 7.1059 would state principles to guide conservators of estates. The rule is divided into two main areas of interest. The first pertains to avoidance of actual and apparent conflicts of interest with the conservatee (rule 7.1059(a)). This portion of the rule lists four areas of concern that touch on the conservator's relationships to providers of services to conservatees in his or her care, including in-home caregivers and providers of institutional residential housing to the impaired elderly.

The second area of interest is specific estate management responsibilities, described in rule 7.1059(b). All are important, but among the most significant are the duties to (1) keep the conservatee's money and property separate from the conservator's or any other person's (para. (b)(6)); (2) keep accurate records of all transactions and, for professional conservators, to maintain prudent accounting systems and safeguards to guard against embezzlement and other cash-asset mismanagement (para. (b)(8)); and (3) secure the conservatee's real and personal property as soon as possible after appointment, including insuring it at appropriate levels and protecting it against damage, destruction, or loss (para. (b)(10)). Other paragraphs in rule 7.1059(b) describe a conservator's responsibilities concerning pursuit of claims held by the estate, defense of claims against it, and collection of the conservatee's public and insurance benefits. (See paragraphs (b)(13)–(15).)

Another important responsibility concerns the disposition of the conservatee's property. Rule 7.1059(b)(18) contains a list of factors to be considered by a conservator when he or she must decide whether to retain or dispose of estate property. One of the factors listed in paragraph 18 is consideration of the previously-expressed and current desires of the conservatee concerning the property, "subject to the factors specified in Probate Code section 2113." Section 2113, a new statute added by the Omnibus Act, requires the conservator to accommodate the conservatee's desires in all areas, not just disposition of estate property—except to the extent that doing so would violate the conservator's fiduciary duties or impose an unreasonable expense on the conservatorship estate.

The rule would also require the conservator to consider the conservatee's ability to manage some of his or her assets, and recommends appropriate action to enable the conservatee to do so, consistent with that ability (rule 7.1059(b)(16)).

Paragraph (17) of rule 7.1059(b) would require estate conservators to advise the conservatee's family members in advance of disposition of the conservatee's tangible personal property to give them an opportunity to acquire the property,

which may have considerable sentimental value to family members above and beyond its monetary worth.

One of the most important sources of the standards provided in rule 7.1059(b) is the *Standards of Practice*, copyrighted and published by the National Guardianship Association,<sup>5</sup> one of the organizations consulted by the advisory committee in the development of this rule. The committee recognizes the contribution of the National Guardianship Association and its *Standards of Practice* in an Advisory Committee Comment following proposed rule 7.1059.

#### *Rule 7.1009*

This rule would substantially restate the conflict provisions of rule 7.1059(a) and expressly incorporate the standards of practice in proposed rule 7.1059(b), and apply them to guardians of estates, except as the context otherwise requires.<sup>6</sup> Two principles of estate management unique to guardianships are expressly stated in rule 7.1009(b), however. These are (1) management for the long-term benefit of the ward if he or she has a parent available who can provide sufficient support; and (2) consideration of a request for court authority to support the ward from the estate if he or she does not have a parent available to provide sufficient support. (See Prob. Code, § 2422.)

#### Alternative Actions Considered

Because of the express requirements of section 2410, the advisory committee did not consider alternatives to proposing one or more rules of court to address the issues raised in the statute. The committee decided, however, to go beyond the statutory directive in one respect. Section 2410 requires the council to establish standards for determining compensation for asset management. The factors courts may consider under proposed rule 7.756 would apply equally to services performed by *and* compensation sought from the estate by conservators and guardians of the person.

#### Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate court staff interested in probate matters; individuals and organizations concerned about the care and protection of the impaired elderly, and

---

<sup>5</sup> The term “guardianship” as used by the National Guardianship Association in its name, publications, and organizational mission, refers primarily to protective proceedings for adults, not minors.

<sup>6</sup> One difference between the conflict provisions for guardians and conservators, for example, pertains to the provision of housing directly by the conservator or guardian for the conservatee or ward. Conservators other than nonprofessional family members are discouraged from providing housing directly, but guardians are not. (Compare rules 7.1059(a)(1) and 7.1009(a)(1).). Rule 7.1009 recognizes that most wards in fact live with their guardians.

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.

Sixteen comments were received. Fifteen commentators approved of the rules or approved of them with modifications. A chart containing the comments and staff's recommended responses is attached beginning at page 15, following the text of the proposed rules of court and Probate Code section 2410.

Judge and advisory committee member F. Clark Sueyres, Jr., points out that the reference to "service providers" in rule 7.1059(a)(2) is unclear and could refer to the employees of a professional fiduciary. The committee intended the term to refer to persons or firms providing services to the conservatee or the estate, not to employees of the conservator providing services to the conservator in the performance of its duties. The committee added a new paragraph (5) to rule 7.1059(a) to clarify that employees of conservators are not service providers for purposes of rule 7.1059(a) if their compensation is payable by the conservator and their services are included in the conservator's request for an award of compensation or are not paid from the conservatorship estate. An identical provision was placed in rule 7.1009(a)(5) to apply to guardians.

Ms. Mary Joy Quinn, the manager of the probate department of the court in San Francisco and a former member of the advisory committee, expresses concern that proposed rule 7.756(c) as circulated for comment would prevent a court from applying an objective standard such as a presumptive hourly rate or a percentage of the value of the estate in its determination of compensation. The committee modified the rule by substituting the term "inflexible" for "fixed." As modified, the rule would permit Northern California courts like San Francisco, which have percentage-of-estate guidelines for compensation for estate management in guardianships and conservatorships, to continue to apply these guidelines as long as the guidelines are not treated as inflexible maximums or minimums or a maximum hourly rate, and as long as the courts also apply other relevant factors listed in rule 7.756(a).

On behalf of the Executive Committee of the State Bar's Trusts and Estates Section, advisory committee member Peter Stern raises a number of issues. First, he seeks clarification of the terms "standards" and "factors" used in the body and headings of proposed rule 7.756 and requests a statement in the rule that a petitioning fiduciary need not relate fees requested to the factors listed in rule 7.756(a) in a fee declaration based on itemized time spent. The committee did not modify the rule in response to this comment but did note that there is no requirement that either the court or the fiduciary relate the fee request to specific factors listed in the rule.

Mr. Stern's second comment requests that rule 7.1059(b)(2) be modified to prohibit "unreasonably speculative investments, as determined by the facts and circumstances of the conservatorship estate" rather than calling for the estate conservator to refrain from speculative investments. In response to this comment, the committee modified the rule to state that an estate conservator must refrain from unreasonably risky investments. Rule 7.1059(b)(2) would not forbid any specific investment. Rather, conservators will continue to be authorized to invest in any vehicle listed in Probate Code section 2574 or approved by the court under section 2590.

Rules 7.1059(b)(9) and (10) call for the fiduciary to undertake as soon as possible after appointment and qualification to locate and safeguard the conservatee's estate planning documents and secure the property of the estate. Mr. Stern requests that these rules be prefaced with the phrase "use ordinary care and diligence," repeating the general standard of Probate Code section 2401(a) for the exercise of all management and control authority by a conservator of the estate. The committee declined to make this change because that standard applies to all actions of the estate conservator. However, the committee did modify the introductory statements of rules 7.1009 and 7.1059 to emphasize that the standards of conduct provided in these rules are all subject to the overall standard of section 2401(a).

Los Angeles attorney Michael Gill makes lengthy comments and objections on a number of topics. His most significant comment is that rule 7.756(a) would place an undue emphasis on the size of the conservatee's estate as a factor in setting compensation payable from it, and that at a minimum this factor should not apply in considering the services of a conservator of the person. The committee disagrees with Mr. Gill's analysis; the size of the conservatorship estate is a factor the court is expressly permitted to consider when determining fees payable from the estate to either a personal or estate conservator under *Conservatorship of Levitt* (2001) 93 Cal.App.4th 544. Moreover, the order of the factors listed in the rule is not an indication of their applicability or importance in an individual case.

#### Implementation Requirements and Costs

Adoption of these rules will result in the usual costs associated with the adoption of a new rule of court. The new rules should not significantly increase the cost of administering a conservatorship or guardianship or supervising the fiduciary. Publicity about the guidelines and adherence to them should in fact reduce these expenses.

Rule 7.756 of the California Rules of Court is renumbered as rule 7.776, and rules 7.756, 7.1009, and 7.1059 are adopted, effective January 1, 2008, to read:

1 **Rule 7.756. Compensation of conservators and guardians**

2  
3 **(a) Standards for determining just and reasonable compensation**

4  
5 The court may consider the following nonexclusive factors in determining  
6 just and reasonable compensation for a conservator from the estate of the  
7 conservatee or a guardian from the estate of the ward:

- 8  
9 (1) The size and nature of the conservatee’s or ward’s estate;  
10  
11 (2) The benefit to the conservatee or ward, or his or her estate, of the  
12 conservator’s or guardian’s services;  
13  
14 (3) The necessity for the services performed;  
15  
16 (4) The conservatee’s or ward’s anticipated future needs and income;  
17  
18 (5) The time spent by the conservator or guardian in the performance of  
19 services;  
20  
21 (6) Whether the services performed were routine or required more than  
22 ordinary skill or judgment;  
23  
24 (7) Any unusual skill, expertise, or experience brought to the performance  
25 of services;  
26  
27 (8) The conservator’s or guardian’s estimate of the value of the services  
28 performed; and  
29  
30 (9) The compensation customarily allowed by the court in the community  
31 where the court is located for the management of conservatorships or  
32 guardianships of similar size and complexity.

33  
34 **(b) No single factor determinative**

35  
36 No single factor listed in (a) should be the exclusive basis for the court’s  
37 determination of just and reasonable compensation.

1 **(c) No inflexible maximum or minimum compensation or maximum**  
2 **approved hourly rate**

3  
4 This rule is not authority for a court to set an inflexible maximum or  
5 minimum compensation or a maximum approved hourly rate for  
6 compensation.

7  
8 **Rule 7.756. 7.776. Compensation of trustees**

9  
10 \* \* \*

11  
12 **Rule 7.1009. Standards of conduct for the guardian of the estate**

13  
14 Except as otherwise required by statute, in the exercise of ordinary care and  
15 diligence in managing and controlling the estates of the ward, the guardian of the  
16 estate is to be guided by the following principles:

17  
18 **(a) Avoidance of actual and apparent conflicts of interest with the ward**

19  
20 The guardian must avoid actual conflicts of interest and, consistent with his  
21 or her fiduciary duty to the ward, the appearance of conflicts of interest. The  
22 guardian must avoid any personal, business, or professional interest or  
23 relationship that is or reasonably could be perceived as being self-serving or  
24 adverse to the best interest of the ward. In particular:

25  
26 (1) Except as appropriate for guardians who are not professional fiduciaries  
27 with full disclosure to the court, the guardian should not personally  
28 provide medical or legal services to the ward;

29  
30 (2) The guardian must be independent from all service providers, except  
31 when (a) no other guardian or service providers are reasonably  
32 available, (b) the exception is in the best interest of the ward, (c) the  
33 circumstances are fully disclosed to the court, and (d) prior court  
34 approval has been obtained;

35  
36 (3) The guardian must neither solicit nor accept incentives from service  
37 providers; and

38  
39 (4) The guardian must not engage his or her family members to provide  
40 services to the ward for a profit or fee when other alternatives are  
41 reasonably available. Where family members do provide such services,  
42 their relationship to the guardian must be fully disclosed to the court,  
43 the terms of engagement must be in the best interest of the ward



1 **Rule 7.1059. Standards of conduct for the conservator of the estate**

2  
3 Except as otherwise required by statute, in the exercise of ordinary care and  
4 diligence in managing and controlling the estate of the conservatee, the  
5 conservator of the estate is to be guided by the following principles:  
6

7 **(a) Avoidance of actual and apparent conflicts of interest with the**  
8 **conservatee**  
9

10 The conservator must avoid actual conflicts of interest and, consistent with  
11 his or her fiduciary duty to the conservatee, the appearance of conflicts of  
12 interest. The conservator must avoid any personal, business, or professional  
13 interest or relationship that is or reasonably could be perceived as being self-  
14 servicing or adverse to the best interest of the conservatee. In particular:  
15

16 (1) Except as appropriate for conservators who are not professional  
17 fiduciaries with full disclosure to the court, the conservator should not  
18 personally provide housing, medical, or legal services to the  
19 conservatee;  
20

21 (2) The conservator must be independent from all service providers, except  
22 when (a) no other conservator or service providers are reasonably  
23 available, (b) the exception is in the best interest of the conservatee, (c)  
24 the circumstances are fully disclosed to the court, and (d) prior court  
25 approval has been obtained;  
26

27 (3) The conservator must neither solicit nor accept incentives from service  
28 providers; and  
29

30 (4) The conservator must not engage his or her family members to provide  
31 services to the conservatee for a profit or fee when other alternatives  
32 are reasonably available. Where family members do provide such  
33 services, their relationship to the conservator must be fully disclosed to  
34 the court, the terms of engagement must be in the best interest of the  
35 conservatee compared to the terms available from independent service  
36 providers, the services must be competently performed, and the  
37 conservator must be able to exercise appropriate control and  
38 supervision.  
39

40 A conservator's employees, including family members, are not service  
41 providers and are not providing services to the conservatee for a profit or fee  
42 within the meaning of this rule if their compensation is paid by the  
43 conservator and their services are either included in the conservator's

1 petition for allowance of the conservator's compensation or are not paid  
2 from the conservatee's estate.

3  
4 **(b) Conservatorship estate management**

5  
6 The conservator of the estate must:

7  
8 (1) Provide competent management of the conservatee's property, with the  
9 care of a prudent person dealing with someone else's property;

10  
11 (2) Refrain from unreasonably risky investments;

12  
13 (3) Refrain from making loans or gifts of estate property, except as  
14 authorized by the court after full disclosure;

15  
16 (4) Manage the estate for the benefit of the conservatee;

17  
18 (5) Subject to the duty of full disclosure to the court and persons entitled  
19 under law to receive it, closely guard against unnecessary or  
20 inappropriate disclosure of the conservatee's financial information;

21  
22 (6) Keep the money and property of the estate separate from the  
23 conservator's or any other person's money or property, except as may  
24 be permitted under statutes authorizing public guardians or public  
25 conservators and certain regulated private fiduciaries to maintain  
26 common trust funds or similar common investments;

27  
28 (7) Hold title reflecting the conservatorship in individual securities, mutual  
29 funds, securities broker accounts, and accounts with financial  
30 institutions;

31  
32 (8) Keep accurate records of all transactions. Professional fiduciaries must  
33 maintain prudent accounting systems and procedures designed to  
34 protect against embezzlement and other cash-asset mismanagement;

35  
36 (9) Undertake as soon as possible after appointment and qualification to  
37 locate and safeguard the conservatee's estate planning documents,  
38 including wills, living trusts, powers of attorney for health care and  
39 finances, life insurance policies, and pension records;

40  
41 (10) Undertake as soon as possible after appointment and qualification to  
42 secure the real and personal property of the estate, insuring it at

1           appropriate levels, and protecting it against damage, destruction, or  
2           loss;

3  
4           (11) Make reasonable efforts to preserve property identified in the  
5           conservatee’s estate planning documents;

6  
7           (12) Communicate as necessary and appropriate with the conservator of the  
8           person of the conservatee, if any, and with the trustee of any trust of  
9           which the conservatee is a beneficiary;

10  
11          (13) Pursue claims against others on behalf of the estate when it would be in  
12          the best interest of the conservatee or the estate to do so. Consider  
13          requesting prior court authority to pursue or compromise large or  
14          complex claims, particularly those that might require litigation and the  
15          assistance of counsel and those that might result in an award of  
16          attorneys’ fees for the other party against the estate if unsuccessful, and  
17          request such approval before entering into a contingent fee agreement  
18          with counsel;

19  
20          (14) Defend against actions or claims against the estate when it would be in  
21          the best interest of the conservatee or the estate to do so. Consider  
22          requesting court approval or instructions concerning the defense or  
23          compromise of litigation against the estate;

24  
25          (15) Collect all public and insurance benefits for which the conservatee is  
26          eligible;

27  
28          (16) Evaluate the conservatee’s ability to manage cash or other assets and  
29          take appropriate action, including obtaining prior court approval when  
30          necessary or appropriate, to enable the conservatee to do so to the level  
31          of his or her ability;

32  
33          (17) When disposing of the conservatee’s tangible personal property, inform  
34          the conservatee’s family members in advance and give them an  
35          opportunity to acquire the property, with approval or confirmation of  
36          the court; and

37  
38          (18) In deciding whether it is in the best interest of the conservatee to  
39          dispose of property of the estate, consider the following factors, among  
40          others, as appropriate in the circumstances:

41  
42                (A) The likely benefit or improvement of the conservatee’s life that  
43                disposing of the property would bring;

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34

- (B) The likelihood that the conservatee would need or benefit from the property in the future;
- (C) Subject to the factors specified in Probate Code section 2113, the previously expressed or current desires of the conservatee concerning the property;
- (D) The provisions of the conservatee’s estate plan concerning the property;
- (E) The tax consequences of the disposition transaction;
- (F) The impact of the disposition transaction on the conservatee’s entitlement to public benefits;
- (G) The condition of the entire estate;
- (H) Alternatives to disposition of the property;
- (I) The likelihood that the property will deteriorate or be subject to waste if retained in the estate; and
- (J) The benefit versus the cost or liability of maintaining the property in the estate.

**Advisory Committee Comment**

The Probate and Mental Health Advisory Committee consulted with several organizations in the development of rule 7.1059, including the National Guardianship Association, a nationwide voluntary association of professional and family fiduciaries, guardians, and allied professionals. In developing this rule, the Probate and Mental Health Advisory Committee considered the National Guardianship Association’s Standards of Practice. Some of these standards have been incorporated into the rules.

Probate Code section 2410

2410. On or before January 1, 2008, the Judicial Council, in consultation with the California Judges Association, the California Association of Superior Court Investigators, the California State Association of Public Administrators, Public Guardians, and Public Conservators, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers, shall adopt a rule of court that shall require uniform standards of conduct for actions that conservators and guardians may take under this chapter on behalf of conservatees and wards to ensure that the estate[s] of conservatees or wards are maintained and conserved as appropriate and to prevent risk of loss or harm to the conservatees or wards. This rule shall include at a minimum standards for determining the fees that may be charged to conservatees or wards and standards for asset management.

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
<p>1. Ms. Donna R. Bashaw                      Immediate past President of National Academy of Elder Law Attorneys (NAELA)                      Laguna Hills, California 92653</p>	<p>AM</p>	<p>Y</p>	<p>Agree with proposed changes if modified.</p> <p>As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity and just plain hard work. Thus, our comments are made not in the spirit of criticism but in the spirit of appreciation of the enormity of the task to which you were commissioned.</p> <p>While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will preclude conscientious, but non professional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you</p>	

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product.</p> <p><b>Rule 7.1059 Standards of Conduct for Conservators of the Estate</b></p> <p>In general we believe this is a good rule. In (a)(4), or in an added (a)(5), it might be good to address the situation of when a conservator is also the caregiver, i.e., fees, etc.</p> <p>Conclusions:</p> <p>We believe that many of the changes made are unnecessary and merely an over reaction to the <i>L.A. Times</i> articles. The main problem in the past has been a lack of funding for the courts, especially to hire investigators. Increased funding is a beneficial part of the changes. However, we believe that the changes have</p>	<p>The provision of housing, medical, and legal services directly by conservators is addressed in rule 7.1059(a)(1). It is discouraged for professional conservators but permitted for nonprofessionals with complete disclosure. The proposed rule does not specifically address caregiver services by conservators, but the provisions of rule 7.1059(a)(4) concerning use of family members to perform services would apply to such services.</p> <p>The committee believes this comment is more properly addressed to the Legislature.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			made it more expensive for the ward and conservatee and have effectively priced the protection of guardianships and conservatorships out of the middle class market. This is the most serious and detrimental problem with the new laws and needs to be rectified immediately. The second most serious problem is with the new accounting rules which, we believe, are unnecessary. Thank you for your efforts in implementing this new law. We, as Elder Law attorneys, are happy to contribute in anyway to assist you in your work.	
2. Mr. Joseph L. Chairez President Orange County Bar Association Irvine, California	A	Y	Agree with proposed changes.	No response necessary.
3. Mr. Michael J. Gill Seaver & Gill, LLP Attorneys at Law Los Angeles, Los Angeles County, California	AM	N	I have the following thoughts or comments relating to the proposed California Rules of Court:  <b>Rule 7.756 - Compensation of Conservators and Guardians</b>  I believe that undue emphasis is often given by the court to the size of the conservatorship estate when, in fact, the primary goal of a conservator is the best interest and benefit of the conservatee, not estate preservation. I would	The size of the conservatorship estate is a factor the court, in the exercise of its discretion, may consider in determining the reasonable fee of a conservator or

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>hate to see the courts apply standards that would make it more difficult for a conservator, be it an individual or a private professional, to expend the time and effort necessary to improve the life of a Conservatee. The local rules for some courts in California already make a distinction between conservator of the person and conservator of the estate fees.</p> <p>It should also be noted that both the current rule and the standards set forth in <i>Estate of Nazro</i> (1971) 15 Cal.App.3d 218, relate to trusts and estates and do not refer directly to the size of the estate. Why do so here?</p>	<p>the attorney for a conservator (see <i>Conservatorship of Levitt</i> (2001) 93 Cal.App.4th 544.) The advisory committee supports this authority. The committee believes that consideration of this factor will, in most cases and in the long run, promote the best interest of conservatees. The committee agrees with the commentator that the conservatee’s best interest, not estate preservation for his or her heirs or beneficiaries, is the primary value. But preservation of the estate for the benefit of the conservatee and those the conservatee has a duty to support is appropriate.</p> <p>Current rule 7.756, renumbered as rule 7.776 in this proposal, pertains to trusts and was based in part on the <i>Nazro</i> opinion. It contains a nonexclusive list of factors the court may consider in determining a trustee’s fees, including the gross income of the trust, the usual source of payment of one-half of the trustee’s compensation and the first source of support for the trust’s primary adult beneficiary in many</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>With the above in mind, I would make the following two minor changes to Rule 7.756(a):</p> <p>1. In rule 7.756(a)(1), the size and nature of the Conservatee’s or Ward’s estate and rule 7.756(a)(4), the conservatee’s or ward’s anticipated future needs and income, should be deleted or at least placed at the bottom of the list of standards as subparagraphs (8) and (9).</p> <p>If included, I believe a comment should be added that the size and nature of the Conservatee’s estate and the future needs and income are factors only in the determination of</p>	<p>trusts. (See Prob. Code, § 16370(a).) Consideration of the entire conservatorship estate, principal and income, from which the conservatee’s support comes in most cases, is thus consistent with the rule governing trusts. In any event, rule 7.776 does not preclude consideration of the size of the principal of the trust in an appropriate case, particularly if the primary adult beneficiary may be supported from principal and he or she is the trustee’s highest priority.</p> <p>1. The committee does not support this request. The order of the factors stated in the rule is not intended to be significant.</p> <p>If the estate must be preserved for as long as possible for the conservatee’s support and care, fees for services of a conservator of the</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>fees for the conservator of the estate. To limit or restrict the amounts of services given due to the lack of the size of the estate short changes the Conservatee when care should be the primary concern. (For an example of an appropriate distinction see Marin County Local Rule 5.84(B) and (C).)</p> <p>2. <b>Rule 7.756(c)</b>—does the use of this rule conflict with Rule 7.756(a)(9) concerning customary fees granted by courts? I note that many courts throughout the state have established some sort of minimum charges be it hourly or percentages for handling conservatorship of the estate issues. (See attachments: Superior Court of Alameda County rule 12.15.10.3; Superior Court of Marin County rule 5.84(B) and (C); Superior Court of San Francisco County rule 14.92, 14.93 and attached letter.) It would seem that the proposed rule unduly limits current local rules especially in the inclusion of the words “minimum compensation”. I would suggest, minimally, the removal of those words.</p> <p>Additionally, some thought might be given to creating a court rule that would allow the court to establish a first-year (and possibly subsequent year) statutory fee for the conservator and guardian of the estate. The utilization of a rule</p>	<p>person should be in part guided by the size of the estate from which they must be paid.</p> <p>2. “Customary fees granted by courts” is but one of nine factors listed in rule 7.756(a), no one of which is to be exclusively determinative under rule 7.756(b). The local rules cited by this commentator are not, by their express terms, inflexible maximums or minimums. If in practice they were rigidly so applied, there might be a conflict with rule 7.756(c), but there is not a facial conflict.</p> <p>The committee believes the proposed first-year “statutory fee” for conservators and guardians of estates would require legislation.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>would place emphasis on services rendered to the conservatee and not billing for bookkeeping and other related services. Making the administration of a conservatorship or guardianship more efficient should always be our goal so long as we do not jeopardize the best interests and care of the conservatee or ward. (See Alameda, Marin and San Francisco rules above.) It has always been my belief that the standard and ordinary obligations required of a conservator, especially now under the new law, substantially exceeds what an executor or administrator is required to do, so creating a minimum fee rule based on the statutory probate fees makes some sense especially for private professional fiduciaries and corporate trustees. This proposition was alluded to by the authors of the “Crisis in Conservatorship” article in the Winter 2006 edition of the <i>California Estates &amp; Trust Quarterly</i>. I have taken the liberty of attaching a proposal, which I drafted earlier (before the hubbub on the private professional Conservators) relating to a statute change on the fees. This of course could be modified for purposes of a court rule, and I would certainly appreciate any comments as to the propriety and workability of the proposal.</p> <p><b>Rule 7.1059 - Standards of Conduct for Conservators of the Estate.</b> I believe that rule 7.1059(a)(3) and (4) are a trap to both</p>	<p>The committee believes that great care should be exercised by</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>individual and private professional conservators that may be used inappropriately against an innocent or unknowing Conservator. For instance, there is no real way of determining what the phrases “incentives” or “service providers” are designed to encompass. Is having lunch purchased for you by a representative of a bond company a prohibited act? What about the insurance agent, CPA or a favored attorney that conservators use? Can the terms be defined more precisely or tempered so as to not unwittingly put conservators “behind the eight ball” for totally appropriate choices as it relates to service providers. (God forbid that they would be required to use the yellow pages every time they sought a service provider for a conservatee.)</p> <p>Rule 7.1059(a)(4)—I believe this rule is duplicative of our existing statute. In any event, I would modify it slightly to use the word “avoid” as opposed to “should not” in the first sentence. Codifying this rule as a prohibition of “should not” places the Conservator in a very awkward position when utilizing family members or employees for menial tasks that would make practical sense but violate the “letter of the law.” The current statute already requires the conservator to identify those individuals and explain their services. That should be sufficient. Do we really want to force</p>	<p>conservators concerning favors or gratuities offered by persons seeking to provide bonds or other services to the conservator that will be paid from the conservatee’s estate. The rule seeks to avoid the appearance of conflict as well as actual conflict.</p> <p>The statute (Probate Code section 2410) requires the proposed rule to establish uniform standards of conduct by conservators and guardians of estates. Of necessity, the rule must follow current statutes closely.</p> <p>Rule 7.1059 as modified by the committee would permit family members to act as employees of</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>the use of the ratification or forgiveness provisions contained throughout the Probate Code for innocent and <i>de minimis</i> services? Lastly, those really involved with conservatorships on a daily basis (i.e., probate examiners and attorneys, judges and conservatorship practitioners) know that it is the individual (and usually family) conservator that needs supervision and monitoring, not the professional fiduciaries. Implementation of court rules that are unnecessarily rigid or restrictive discourage private professional fiduciaries and corporate trustees from taking on conservatorships, thus driving out the best and efficient from the field and forcing the handling of conservatorships into the hands of inexperienced and inherently conflicted individuals and family members.</p>	<p>conservators if their services are reflected in the conservator’s requests for compensation or are not paid from the conservatee’s estate.</p>
<p>4. Mr. Daniel O. Holmes Private Conservator Orinda, California 94563</p>	<p>AM</p>	<p>N</p>	<p>Agree with proposed changes if modified.</p> <p>There have been serious discrepancies in compensation awards by different courts. A minimum compensation schedule for services should be required of every court for each case at initiation so conservators know what to expect. Working without knowing in advance is absurd. Private professional conservators also</p>	<p>The committee does not believe it has authority under current law to propose adoption of a minimum statewide compensation schedule.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response	
			<p>need to be compensated for the responsibility they embrace.</p> <p>“Unusual skill” is a vague term-virtually meaningless (rule 7.756(a)(7)).</p>	<p>Demonstration of unusual skill in the performance of services is a long-recognized factor in consideration of reasonable compensation of other professionals, including attorneys.</p>	
5.	Ms. Jamie Lamborn Retired Sacramento, California	A	N	<p>Agree with proposed changes.</p> <p>[Complaints about specific case not directed to contents of proposal omitted.]</p>	No response necessary.
6.	Ms. Keeley C. Luhnow Associate Attorney La Jolla, California	AM	N	<p>Agree with proposed changes if modified.</p> <p>Rule 7.1059(a)(1) is phrased awkwardly and should be rephrased. It is hard to understand what is meant without reading it multiple times. Otherwise, I am in agreement.</p>	No response necessary.
7.	Ms. Pat McVey-Ritsick Private Fiduciary PMR Fiduciary Services Benicia, California	AM	N	<p>Agree with proposed changes if modified.</p> <p>Add under conservator of estate – Check with the state comptroller’s office (of any state that the ward has resided in) to make sure that the ward’s property has not been escheated to the state. If it has, then make application as the conservator to regain these assets.</p>	<p>This recommendation might be a good one if available information supports the possibility of an escheat in another state, but the recommendation seems too narrow and unlikely to be a productive effort in the majority of cases to be</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
				included in the rule.
<p>8. Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California</p>	A	Y	<p>Agree with proposed changes.</p> <p><b>Rule 7.756. Compensation of conservators and Guardians</b> <b>(a) Standards for determining just and reasonable compensation</b></p> <p>PFAC recommends that paragraph (a)(8) be clarified to relate to the monetary value of services of a conservator or guardian, inasmuch as paragraph (a) (2) relates to the benefit to the ward or conservatee.</p> <p><b>(c) No fixed compensation or maximum hourly rate authorized</b></p> <p>PFAC strongly supports proposed Section (c).</p> <p><b>Rule 7.1009. Standards of conduct for guardians of the estate</b></p> <p>PFAC supports the language in the proposed Rule.</p>	<p>The committee believes this change is unnecessary. Paragraph (8) allows the court to consider the fiduciary’s own estimate of the value of his or her services performed.</p> <p>The committee has modified this part of the rule by replacing “fixed” with “inflexible,” but does not believe this change would change PFAC’s support of this part of rule 7.756.</p> <p>No response necessary.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p><b>Rule 7.1059. Standards of conduct for conservators of the estate</b></p> <p>PFAC recommends that Section (a)(4) be revised as follows: In cases where a conservator’s family member or members provide services to the conservatee, their relationship to the conservator must be fully disclosed to the court. The terms of employment must be in the best interest of the conservatee, the services must be competently performed, and the conservator must be able to exercise appropriate control and supervision.</p>	<p>The committee prefers to include the statement in the first sentence of paragraph (4), which discourages the practice of engaging family members when other alternatives are reasonably available. The proposed rule has been modified to refer to “engagement” rather than “employment,” because true employment of family members should not be discouraged if their compensation is paid by the fiduciary and their services are part of the conservator’s request for approval of compensation or they are not paid by the estate.</p>
<p>9. Ms. Mary Joy Quinn Director, Probate Superior Court of California, County of San Francisco San Francisco, California</p>	<p>AM</p>	<p>Y</p>	<p>Agree with proposed changes if modified.</p> <p>Agree with standards of conduct.</p> <p>Standards for determining compensation, however, will be very difficult to administer. Proposed rule 7.756 should be modified to delete (c). If a court can apply a percentage of estate value or an hourly rate, along with consideration of factors listed in the proposed rule, fees for conservators and guardians of the</p>	<p>The proposed rule would permit Northern California courts that have trust-like percentage-of-estate guidelines to continue to apply them so long as they don’t become inflexible maximums or minimums or a maximum hourly rate and they</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>estate will be generally uniform within that court. If, on the other hand, the court cannot begin review of fees with an objective measure such as estate value or hourly rate, each fee request will be subjectively reviewed by the file examiner and judicial officer for compliance with the standards of rule 7.756. The process of determining appropriate fees will be extremely time consuming and will open the court to claims of favoritism. Moreover, application of a percentage base for fees is consistent with Probate Code provisions for compensation of personal representatives in probate estates.</p>	<p>also apply all other relevant factors listed in rule 7.756(a).</p>
<p>10. Ms. Kathleen U. Poling Attorney Poling &amp; Poling Martinez, California</p>	<p>AM</p>	<p>N</p>	<p>Agree with proposed changes if modified.</p> <p>I agree with the proposed changes for the most part, but would recommend that there be a provision for allowance of local rules for guideline rates to be established by each court for private professional conservators. You may find that using size of the estate as a criteria will deter private professionals from taking cases where there is an obvious need for a conservator, unless they know that there is a sizeable estate. That is often undetermined at the outset.</p>	<p>See response to comment of Ms. Mary Joy Quinn, above.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
<p>11. Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California</p>	<p>AM</p>	<p>Y</p>	<p>Agree with proposed changes if modified.</p> <p>The Executive Committee proposes a number of changes to the proposed rules of court.</p> <p>1. With regard to fees (Proposed rule 7.776), The Executive Committee seeks clarification of the terms “standards” and “factors,” used in the title and the body of the rule, and desires a clarification expressed in the body of the rule that it not be necessary to relate the fees sought in an itemized fee declaration (where line item fees, dates, and services are presented) to a particular factor or standard. Subdivision (b) of the proposed rule is probably the best place to insert such clarification.</p> <p>2. With regard to standards of conduct for conservators of the estate (proposed rule 7.1059), the Executive Committee recommends the following changes:</p> <p>(b)(2): Rewrite to read as follows:</p> <p>“Refrain from unreasonably speculative investments, as determined by the facts and circumstances of the conservatorship estate.” The standard as written prohibits nearly all investments, allowing only those that are insured and guaranteed against loss of principal.</p>	<p>1. The factors listed in rule 7.756(a) are factors the court may consider in approving fees. There is no requirement in the rule that either the petitioning conservator or guardian or the court must relate a showing in an itemized fee declaration to one or more of the listed factors.</p> <p>The committee has modified this portion of rule 7.1059 to provide that estate conservators should refrain from “unreasonably risky investments,” in part to satisfy this commentator’s concerns. The</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>(b)(9): Rewrite the beginning:</p> <p>“Use ordinary care and diligence as soon as possible after appointment and qualification . . .”</p> <p>(b)(10): Rewrite the beginning to read as follows:</p> <p>“Use ordinary care and diligence in the management of the real and personal property of the conservatorship estate . . .”</p> <p>The rationale for these changes is to mitigate the duty implied in the word “undertake” and to align the rule with the Probate Code standard in section 2401.</p> <p>(b)(11): The Executive Committee recommends that this subdivision be stricken as redundant. It is encompassed in (b)(18)(D) (disposition of property), and all property of the conservatee should be managed properly, in any case.</p> <p>Overall, the Executive Committee agrees that</p>	<p>proposed rule does not limit any particular investment. Conservators or guardians may invest in any vehicle authorized by the court under section 2570 or listed in section 2574.</p> <p>The committee disagrees with the changes recommended by this commentator in rules 7.756(b)(9) and (10). The ordinary care and diligence standard of section 2401 applies to all conduct of the fiduciary, without restating it in every standard of estate management in the proposed rule. Instead of selectively referring to this standard in some paragraphs of the rule, the committee has revised the opening statement of rules 7.1059 and 7.1009 to refer to the statutory standard, indicating that it applies to all provisions of the rule.</p> <p>The committee disagrees with this recommendation. Particular emphasis on preserving property mentioned in estate planning documents is appropriate. Subparagraph 18(D) merely lists a factor in deciding whether to</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>the proposed standards are well intentioned and designed to set a high ethical tone, at the risk of setting standards that might serve to intimidate fiduciaries in a manner that would cause them to spend so much time vetting out proposed actions with counsel that they would generate substantial administrative cost to the estate.</p>	<p>dispose of property. The first item emphasizes preservation of the property before a decision is made to dispose of it, the second, factors to be considered in that decision.</p>
<p>12. Hon. F. Clark Sueyres, Jr., Judge of the Superior Court of California, County of San Joaquin Stockton, California</p>	<p>AM</p>	<p>N</p>	<p>Agree with proposed changes if modified.</p> <p>Rule 7.1059(a)(2) requires a conservator to be independent of all other service providers. As drafted it can be read to exclude the use of subordinate staff by a private professional conservator. Employees of different skills, or lesser qualifications, could spend fewer hours, or be paid at lesser rates, at substantial savings for the estate. The Rule should state, "independent of all other service providers except those directly employed by the conservator and disclosed to the court in the account."</p>	<p>The committee has clarified rule 7.1059(a) by adding new text after paragraph (4) advising that a conservator's employees are not "service providers" within the meaning of the rule if their compensation is paid by the conservator and is either included in the conservator's request for reasonable compensation for its services or is not paid from the conservatee's estate.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
<p>13. Superior Court of California County of Los Angeles Los Angeles, California</p>	<p>AM</p>	<p>Y</p>	<p>Agree with proposed changes if modified.</p> <p>Rule 7.1059(b)(9): Concerned about the application of this provision when the conservator is not the trustee, agent, etc.</p> <p>Subsection (b)(11): Concerned that this rule imposes a duty on the conservator to preserve non-conservatorship assets, e.g. trust assets when the conservator is not a trustee.</p> <p>Subsection (b)(13): Appears the last sentence be not be limited to contingent fee agreement and should apply to fee agreements generally.</p> <p>Subsection (b)(14): Appears this section includes a suggestion that the conservator consider obtaining court approval before entering into a fee agreement with counsel. Suggest adding a sentence, similar to the one subsection (b)(13), re fee agreements.</p>	<p>This provision, requiring the estate conservator to undertake to locate and safeguard the conservatee’s estate planning documents, does not require the conservator to collect the documents from a third party in possession of them, merely to try to locate them and assure that they are safe and secure in responsible hands.</p> <p>The term “reasonable efforts” as used in paragraph (11) indicates that this duty is not contemplated.</p> <p>The committee disagrees with this recommendation. Not all attorney-fee agreements must be pre-approved by the court.</p> <p>The committee does not believe paragraph (14) suggests court approval of a defense counsel’s fee agreement.</p>
<p>14. Ms. Robin C. Westmiller, J.D.</p>	<p>N</p>	<p>Y</p>	<p>Do not agree with proposed changes.</p>	

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
<p>President National Association to Stop Guardian Abuse Thousand Oaks, California</p>			<p>This entire section does nothing to protect the rights of the heirs, the family, or the assets of the person conserved. It's full of ambiguous legal language such as "just and reasonable," "recommend," "consider," "may not" instead of "shall not" and allows the conservator carte blanche in liquidating and spending all of the conservatee's assets and paying whatever "reasonable" attorney fees they incur, leaving the family with little recourse to stop the conservator and their attorney from depleting every dime which rightfully belongs to the spouse under California community property law.</p> <p>Rule 7.756( c )—No fixed compensation or maximum hourly rate authorized.</p> <p>There must be fixed maximum hourly rates.</p> <p>Rule 7.1059 (a) 4—Conservator should not employ his or her family members.</p> <p>Change to <i>must not</i> employ his or her family members.</p>	<p>The committee does not agree with this commentator's assessment of the proposed rule.</p> <p>Employment of family members may be in the conservatee's best interest. The rule would require full disclosure to the court of the circumstances.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>Paragraph 2:— . . . To prevent risk of loss or harm to the conservatees,” add the line “And their rightful spouse and heirs.”</p> <p>Subdivision (c) would advise that the rule is not to be construed as authority for a court to set a fixed maximum compensation or a maximum approved hourly rate for compensation. So, what good is this “rule” if there is no limit to how much a conservator can spend from the assets of the conservatee? Who determines what a “reasonable” hourly rate is for a conservator, or an attorney for that matter? Once one is appointed, they are at liberty to charge whatever they wish with no way the family can prevent or challenge this amount without hiring their own attorney to fight it. Millions of dollars are at risk. Property which rightfully would go to the children and grandchildren of the conserved will now be freely diverted into the pockets of whoever the conservator decides to pay.</p> <p>Add this wording:</p> <p>“No conservator shall use the assets of their conservatee to pay their own personal expenses or attorney fees, especially to defend themselves against a civil cause of action instigated by the</p>	<p>The principal concern is the protection and support of the conservatee and those entitled to support from the conservatee, not the expectations of the conservatee’s heirs or beneficiaries.</p> <p>The limit is the reasonable value of the services actually rendered, applying the factors specified in the rule.</p> <p>This proposed language would be inconsistent with statute and thus beyond the power of the Judicial Council to provide in a rule of</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>family of the conservatee.”</p> <p>Conservators are awarded their powers through the court, a government agency. Any government agency has the power to regulate compensation, such as the notary. There is no competition within the private conservatorship program. Obviously it needs to be regulated, and one aspect of this regulation must be the amount billed to the estate, and the ability of the conservator to have unlimited funds available to them.</p> <p>(B) (10)—Undertake as soon as possible to secure the real and personal property of the estate. . . .</p> <p>Change to: After notifying the family and receiving permission in writing of any action placed on real and personal property of the estate.</p> <p>(13) might require litigation and assistance of counsel</p> <p>Add: And that assistance of counsel and any litigation shall not be paid for with the assets of the conservatee</p> <p>(14) Defend against claims...etc.</p>	<p>court.</p> <p>The court has authority to approve or disallow requests for compensation based on the reasonable value of the services provided.</p> <p>Permission of family members to secure real and personal property of the conservatee is not required under statute.</p> <p>This provision would not comply with statute.</p>

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response
			<p>Same as above. Cannot use the assets of the estate to pay for any legal fees.</p> <p>(17)—“Consider” notifying the conservatee’s family members in advance...</p> <p>Which give the conservator the option not to notify the family or anyone else. If they “consider” this and decide not to, there is nothing the family can do.</p> <p>Change to <i>must</i> notify the conservatee’s family members in advance</p> <p>Considering these recommendations were provided by the State Bar of California and the National Guardianship Association, it is not surprising they would protect the cash cow of the conservatee’s estate.</p>	<p>This provision would not comply with statute.</p> <p>The committee has revised this paragraph to require the conservator to advise family members and give them an opportunity to acquire the conservatee’s tangible personal property.</p>
<p>15. Mr. Craig Willford Attorney at Law (Certified Specialist: Probate, Est. Planning, and conservatorship Law by the Board of Specialization, State Bar of California) Whittier, California</p>	<p>AM</p>	<p>N</p>	<p>Agree with proposed changes if modified.</p> <p>I believe rule 7.1059(a)(4) should be modified. It starts, “(4) The conservator should not employ his or her family members to provide services to the conservatee for a profit or fee when other alternatives are reasonably available.”</p>	

SP07-14

Probate: Standards of Conduct for Conservators and Guardians of Estates and for Determining Compensation of Conservators and Guardians (renumber existing rule 7.756 as rule 7.776 and adopt rules 7.756, 7.1009, and 7.1059 of the California Rules of Court).

Commentator	Position	Comment on behalf of group?	Comment	Committee response	
			<p>I believe it would be better to enable the hiring of a spouse to care for the conservatee, say, while the conservator is out shopping for groceries in instances where the conservator of the estate is also the conservator of the person and is the primary caregiver. Would it be always better to hire an outside person, say when the absence from the home is only an hour long?</p> <p>Perhaps something such as this: "(4) The conservator should not employ his or her family members to provide services to the conservatee for a profit or fee, except when it can be shown to the court that doing so is (1) as economical or more economical than other alternatives reasonably available or (2) in the best interests of the conservatee."</p>	<p>The committee has clarified rule 7.1059(a) by adding a new paragraph (5) advising that a conservator's employees are not "service providers" within the meaning of paragraphs (2) and (4) of the rule if their compensation is paid by the conservator and is either included in the conservator's request for compensation for the conservator's services or is not paid from the conservatee's estate.</p>	
16.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	<p>Agree with proposed changes.</p> <p>While this is probably going to cause the most controversy, I think it's an excellent piece of work.</p>	No response necessary.