

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

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**Report**

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee  
Hon. Don Edward Green, Chair  
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DATE: November 8, 2006

SUBJECT: Technical Changes in Rules Governing Private Professional Guardians  
and Conservators (amend Cal. Rules of Court, rules 7.1010 and 7.1060)  
(Action Required)

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Issue Statement

Rules 7.1010 and 7.1060 of the California Rules of Court were adopted by the Judicial Council effective January 1, 2006, in response to a statutory directive.<sup>1</sup> These rules establish initial qualifications required of private professional guardians (rule 7.1010) and conservators (rule 7.1060), and prescribe the number of hours and subject matter of continuing education these fiduciaries must complete.

The recently-enacted Omnibus Conservatorship and Guardianship Reform Act of 2006<sup>2</sup> (“the Act”) contains a comprehensive licensure scheme for professional fiduciaries, including guardians and conservators subject to rules 7.1010 and 7.1060. The licensure portion of the Act contains provisions governing initial qualifications and continuing education of professional guardians and conservators that will replace these rules.

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<sup>1</sup> Stats. 2004, chapter 625 (AB 1155), § 1 (uncodified).

<sup>2</sup> Stats. 2006, chapters 490–493 (SB 1116, SB 1550, SB 1716, and AB 1363), § 1 of chapter 493 (uncodified).

The new licensure requirements will be effective on and after July 1, 2008.<sup>3</sup> Until then, rules 7.1010 and 7.1060 will continue to define the qualifications for court appointment of private professional guardians and conservators, and provide for their continuing education.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2007, amend rules 7.1010 and 7.1060 as follows:

1. Amend rules 7.1010(d)(1)(A) and 7.1060(d)(1)(A) to extend authority to appoint the private professional fiduciaries described in those subparagraphs through June 30, 2007, a six-month extension;
2. Amend rules 7.1010(d)(1)(B) and 7.1060(d)(1)(B) to similarly extend through June 30, 2007 the date by which fiduciaries so appointed must complete the course in fiduciary management described in rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B);
3. Amend rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B) to specifically identify the AOC-approved course in fiduciary management;
4. Amend rules 7.1010(f)(3) and 7.1060(f)(3) to extend through June 30, 2008 the provisions concerning continuing education of private professional guardians and conservators effective in 2007;
5. Delete the requirement of AOC approval of continuing education courses and providers beginning in 2008 (existing rules 7.1010(f)(2) and (g)(4) and 7.1060(f)(2) and (g)(4)); and
6. Add a new subdivision (k) to rule 7.1010 and a new subdivision (j) to rule 7.1060 to repeal both rules effective June 30, 2008, and make conforming changes to the local statement-filing requirements of rules 7.1010(h)(2)(A) and 7.1060(h)(2)(A) because of the expiration of those requirements effective July 1, 2008.

The proposed amended rules are attached at pages 6–11.

### Rationale for Recommendation

This proposal would affect rules 7.1010 and 7.1060 of the California Rules of Court during the eighteen-month transition period from January 1, 2007 to July 1, 2008, when the licensure provisions of the Act will become effective and replace these rules.

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<sup>3</sup> The licensure provisions are contained in section 3 of chapter 491 (SB 1550), which adds chapter 6 to Division 3 of the Business and Professions Code (section 6500 et seq.) establishing a Professional Fiduciaries Bureau in the Department of Consumer Affairs. New Business and Professions Code section 6530(a) establishes the effective date of the license requirement.

Rules 7.1010 and 7.1060 provide six different ways to satisfy the initial qualification requirements for appointment as a private professional guardian or conservator. One of the six ways is to have prior experience as a guardian or conservator appointed in California courts at least 10 times in the five-year period immediately before January 1, 2006 (see rules 7.1010(b)(2)(C) and 7.1060(b)(2)(C)). That ground of qualification is referred to in this report as the “10-in-5 provision.”

A professional guardian or conservator who satisfies one of the other five qualification requirements of these rules but does not satisfy the 10-in-5 provision may be appointed if he or she first completes an AOC-approved course in fiduciary management for guardians and conservators (see rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B)).

Rules 7.1010(d)(1) and 7.1060(d)(1) contain special transitional provisions that permit a court to appoint a professional guardian or conservator in 2006 who is otherwise qualified under the rules but does not satisfy the 10-in-5 provision and has not as of the date of appointment completed the fiduciary management course. The person so appointed must complete the course and file proof of completion before January 1, 2007. The court must remove a fiduciary who fails to do so.

The course in fiduciary management approved by the AOC is offered by University Extended Education at California State University, Fullerton (CSUF). The course consists of four classes totaling 54 hours of instruction, offered on campus at the university and statewide over the Internet. The entire course takes approximately 12 weeks to complete, for both on-campus and Internet students.

CSUF restricts the number of students who can attend classes on campus because of limited classroom space. The university also places limits on the number of students who can participate in the Internet classes. The advisory committee has been advised that these limitations have led to full enrollment in the CSUF fiduciary management courses offered in 2006, for on-campus and Internet students. Qualified professional fiduciaries may have been unable to take the course during the current year.

The committee also believes that many otherwise qualified court-appointed fiduciaries may not have been given sufficient notice of the CSUF fiduciary management course in time to enroll in or complete the course in 2006. The uncertainty throughout 2006 caused by the pending conservatorship legislation and the considerable publicity about conservatorship matters that preceded it reduced the publicity about the CSUF course originally planned during this time.

This proposal would address these issues by (1) amending rules 7.1010(d)(1)(A) and 7.1060(d)(1)(A) to extend the court’s transitional appointment authority into 2007; (2) amending rules 7.1010(d)(1)(B) and 7.1060(d)(1)(B) to extend the deadline to

complete the fiduciary management course until July 1, 2007, a six-month extension; and (3) amending rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B) to identify the AOC-approved fiduciary management course by name.<sup>4</sup>

The advisory committee believes the court's discretionary authority to appoint qualified professional fiduciaries subject to later completion of the CSUF course, and the deadline for actually completing the course, can be extended for six-months without harm to wards or conservatees.<sup>5</sup> If courts are forced to remove otherwise well-performing and qualified fiduciaries in early 2007 merely because they failed to complete the fiduciary management course in 2006, their wards and conservatees could well suffer more rather than less harm. In many cases there may be no equally qualified professional fiduciary and no family members or friends of a ward or conservatee available to replace a removed guardian or conservator.

#### *Continuing education*

Rules 7.1010 and 7.1060 require continuing education of private professional guardians and conservators beginning in 2007. During that year the education must be provided by specific organizations and types of organizations listed in rules 7.1010(f)(3) and 7.1060(f)(3). AOC approval of courses or providers is not required. However, rules 7.1010(f)(2) and 7.1060(f)(2) will require AOC approval of courses and providers beginning in 2008. The advisory committee proposes to extend application of the 2007 continuing education rules through June 30, 2008, when these rules will be replaced by the new law, including its continuing education provisions, and to eliminate the requirement of AOC course and provider approval in 2008.<sup>6</sup> The committee believes that requiring the AOC to approve continuing education providers and courses for just the first six months of 2008 is an inappropriate and unjustified administrative and financial burden.

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<sup>4</sup> The AOC would retain authority under the amended rules to approve courses in fiduciary management in addition to the course offered by CSUF. It is unlikely, however, that additional courses will be approved because the course requirement will expire with these rules when the new law's licensure system becomes effective on July 1, 2008. The new licensing provisions include a 30-hour pre-licensing education program required of all professional fiduciaries that is analogous to the CSUF course, but that program will be subject to the approval of the new Professional Fiduciaries Bureau, not the AOC (see new Business and Professions Code sections 6538(a) and 6540, part of section 3 of Senate Bill 1550).

<sup>5</sup> The next CSUF fiduciary management course is scheduled to begin in February 2007 and will be completed before the end of June.

<sup>6</sup> See new Business and Professional Code sections 6538(b) and 6540, part of section 3 of Senate Bill 1550.

### *Repeal of rules*

Rules 7.1010(k) and 7.1060(j) would be added to provide for repeal of both rules effective July 1, 2008, when the rules will be replaced by the licensure provisions of Senate Bill 1550.

### Alternative Actions Considered

The advisory committee considered amending rules 7.1010 and 7.1060 to conform their provisions defining initial qualifications for appointment as a private professional guardian or conservator to the qualifications required for professional fiduciaries under the new law. However, the committee decided to retain the qualifications provided in the rules during this transition period because they are generally more restrictive than the qualifications required under the new law.

### Comments of Interested Parties

This proposal has not been circulated for public comment. The Probate and Mental Health Advisory Committee recommends that it be considered by the council without circulation for public comment because the proposed changes are minor substantive changes made necessary or appropriate by the new legislation and are unlikely to create controversy, within the meaning of rule 6.22(d)(2).<sup>7</sup>

There are a number of amendments. However, their net effect is merely to (1) extend for six months the deadline for otherwise qualified professional guardians and conservators to be appointed before completing the fiduciary management course required of them; (2) extend for six months the time within which these fiduciaries must complete the course; (3) extend application of the 2007 continuing education provisions of the rules for six months, until June 30, 2008 when the entire rules will be replaced by new legislation; and (4) eliminate the requirement of AOC approval of continuing education courses and providers during that six month period. These provisions are not controversial because they are made necessary or appropriate by the legislation.

### Implementation Requirements and Costs

The proposal would incur the usual costs incurred in revising any rule of court and distributing the revised rule to the courts and others. The entire cost the AOC would incur to administer the existing rules' 2008 continuing education provisions during the first half of that year would be eliminated.

### Attachment

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<sup>7</sup> Rule 10.22(d)(2) of the reorganized rules of court effective January 1, 2007.

Rules 7.1010 and 7.1060 of the California Rules of Court are amended, effective January 1, 2007, to read:

1 **Rule 7.1010. Qualifications and continuing education requirements for**  
2 **private professional guardians**

3  
4 (a) \* \* \*

5  
6 (b) **Qualifications for appointment**

7  
8 (1) \* \* \*

9  
10 (2) \* \* \*

11  
12 (3) Has either:

13  
14 (A) \* \* \*

15  
16 (B) Received the Certificate in Fiduciary Management for  
17 Conservators from University Extended Education, California  
18 State University, Fullerton, or a certificate from an equivalent  
19 program in professional fiduciary management for guardians or  
20 conservators from an accredited educational institution approved  
21 by the Administrative Office of the Courts; Suceessfully  
22 completed a program of education approved by the  
23 Administrative Office of the Courts and received a certificate or  
24 its equivalent in professional fiduciary management for guardians  
25 or conservators; and

26  
27 (4) \* \* \*

28  
29 (c) \* \* \*

30  
31 (d) **Transitional provisions for qualifications**

32  
33 (1) *Completion of education requirements in 2006 and 2007*

34  
35 (A) During 2006 and 2007, the court may, in the exercise of its  
36 discretion, appoint as guardian of the estate, or of the person and  
37 estate, of an unrelated minor a private professional guardian who  
38 does not satisfy the prior experience requirement of (b)(2)(C) or  
39 the education requirement of (b)(3)(B) on the date of  
40 appointment.

1  
2 (B) A private professional guardian appointed under (A) must  
3 complete the education requirement of (b)(3)(B) and provide a  
4 certificate or other proof of completion satisfactory to the court  
5 before ~~January~~ July 1, 2007.

6  
7 (C) \* \* \*

8  
9 (2) *Guardianships pending on January 1, 2006*

10  
11 (A) The court may, in the exercise of its discretion, permit a private  
12 professional guardian who was appointed and qualified as a  
13 guardian of the estate, or the person and estate, of an unrelated  
14 minor before January 1, 2006, to continue as guardian after that  
15 date on conditions approved by the court, although the guardian  
16 does not on that date satisfy the qualifications specified in  
17 (b)(2)~~(A)~~—(E)

18  
19 (B) A private professional guardian permitted to continue as guardian  
20 under (A) may apply to the court for removal of any conditions  
21 imposed by the court at any time after January 1, 2006 that he or  
22 she becomes qualified under (b)(2)(A), (B), or (D) and satisfies  
23 the education requirement of (b)(3)(B).

24  
25 (e) \* \* \*

26  
27 (f) **Approved eligible continuing education providers**

28  
29 (1) \* \* \*

30  
31 ~~(2) Effective January 1, 2008, continuing education providers and courses~~  
32 ~~must be approved by the Administrative Office of the Courts.~~

33  
34 ~~(3)~~(2) Continuing education completed in ~~calendar~~ 2007 and through  
35 June 30, 2008 complies with the requirements of this rule if it addresses  
36 the subjects required by this rule, is certified for continuing education  
37 credit by the provider in accordance with the requirements of  
38 subdivision (g), and is provided by:

39  
40 (A)–(I) \* \* \*

1 (g) **Requirements for continuing education providers**

2  
3 Each continuing education provider must:

4  
5 (1)—(3) \* \* \*

6  
7 ~~(4)—Be approved under (f)(2).~~

8  
9 (h) **Proof of compliance**

10  
11 (1) *Qualifications*

12  
13 Every private professional guardian must demonstrate, under penalty of  
14 perjury, his or her qualifications under (b) in his or her information  
15 statement filed with the clerk of each appointing court under Probate  
16 Code section 2342, beginning with the first statement filed after the  
17 effective date of this rule and annually thereafter, through June 30,  
18 2008.

19  
20 (2) *Continuing education*

21  
22 (A) Every private professional guardian must declare, under penalty  
23 of perjury, that he or she has complied with the continuing  
24 education requirements under (e) for the previous calendar year in  
25 each his or her annual statement filed with the clerk of each  
26 appointing court after December 31, 2007 under Probate Code  
27 section 2342, ~~beginning with the first statement filed after~~  
28 ~~December 31, 2007, and annually thereafter.~~

29  
30 (B) Every private professional guardian must retain certificates of  
31 attendance or other proof of participation in continuing education  
32 required by this rule for a period of three years after the end of  
33 each year of education completed under this rule. An appointing  
34 court may require a private professional guardian to produce, in a  
35 manner determined by the court, proof of compliance with the  
36 requirement for any year at any time within that three-year period.

37  
38 (3) \* \* \*

39  
40 (i)—(j) \* \* \*

1 **(k) Expiration date**

2  
3 This rule is repealed effective July 1, 2008.

4  
5 **Rule 7.1060. Qualifications and continuing education requirements for**  
6 **private professional conservators**

7  
8 (a) \* \* \*

9  
10 **(b) Qualifications for appointment**

11  
12 Except as otherwise provided in this rule, effective January 1, 2006, a court  
13 may not appoint a private professional conservator as conservator of an  
14 unrelated person unless on the date of the order of appointment the private  
15 professional conservator:

16  
17 (1) \* \* \*

18  
19 (2) \* \* \*

20  
21 (3) Has either:

22  
23 (A) \* \* \*

24  
25 (B) Received the Certificate in Fiduciary Management for  
26 Conservators from University Extended Education, California  
27 State University, Fullerton, or a certificate from an equivalent  
28 program in professional fiduciary management for guardians or  
29 conservators from an accredited educational institution approved  
30 by the Administrative Office of the Courts; ~~Successfully~~  
31 completed a program of education approved by the  
32 Administrative Office of the Courts and received a certificate or  
33 its equivalent in professional fiduciary management for guardians  
34 or conservators; and

35  
36 (4) \* \* \*

37  
38 (c) \* \* \*

39  
40 **(d) Transitional provisions for qualifications**

41  
42 (1) *Completion of education requirements in 2006 and 2007*

1 (A) During 2006 and 2007, the court may, in the exercise of its  
2 discretion, appoint as conservator of an unrelated person a private  
3 professional conservator who does not satisfy the prior experience  
4 requirement of (b)(2)(C) or the education requirement of  
5 (b)(3)(B) on the date of appointment.  
6

7 (B) A private professional conservator appointed under (A) must  
8 complete the education requirement of (b)(3)(B) and provide a  
9 certificate or other proof of completion satisfactory to the court  
10 before ~~January~~ July 1, 2007.  
11

12 (C) The court must remove a private professional conservator  
13 appointed under (A) who fails to timely comply with (B).  
14

15 ~~(3)~~(2) *Conservatorships pending on January 1, 2006*

16  
17 (A) \* \* \*

18  
19 (B) \* \* \*

20  
21 (e) \* \* \*

22  
23 (f) **Approved eligible continuing education providers**

24  
25 (1) \* \* \*

26  
27 ~~(2) Effective January 1, 2008, continuing education providers and courses~~  
28 ~~must be approved by the Administrative Office of the Courts.~~  
29

30 ~~(3)~~(2) Continuing education completed in ~~calendar~~ 2007 and through  
31 June 30, 2008 complies with the requirements of this rule if it addresses  
32 the subjects required by this rule, is certified for continuing education  
33 credit by the provider in accordance with the requirements of  
34 subdivision (g), and is provided by:  
35

36 (A)–(I)  
37

38 (g) **Requirements for continuing education providers**

39 Each continuing education provider must:  
40

41  
42 (1)–(3) \* \* \*  
43

1           ~~(4) Be approved under (f)(2).~~

2  
3       **(h) Proof of compliance**

4  
5           (1) *Qualifications*

6  
7           Every private professional conservator, under penalty of perjury, must  
8           demonstrate his or her qualifications under (b) in his or her information  
9           statement filed with the clerk of each appointing court under Probate  
10          Code section 2342, beginning with the first statement filed after the  
11          effective date of this rule and annually thereafter, through June 30,  
12          2008.

13  
14          (2) *Continuing education*

15  
16           (A) Every private professional conservator must declare, under  
17           penalty of perjury, that he or she has complied with the  
18           continuing education requirements under (e) for the previous  
19           calendar year in ~~his or her~~ each annual statement filed with the  
20           clerk of each appointing court after December 31, 2007 under  
21           Probate Code section 2342, ~~beginning with the first statement~~  
22           ~~filed after the effective date of this rule, and annually thereafter.~~

23  
24           (B) \* \* \*

25  
26          (3) *Report of noncompliance to the Statewide Registry*

27  
28           If an appointing court determines that a private professional  
29           conservator has failed to comply with the qualification or continuing  
30           education requirements of this rule, the court clerk must forward a copy  
31           of the court's determination to the Statewide Registry under Probate  
32           Code section 2850(d).

33  
34       **(i) Waiver of continuing education**

35  
36           Notwithstanding any other provision of this rule, a court may, on ground of  
37           hardship, waive the continuing education requirements of (e), in whole or in  
38           part and under conditions satisfactory to the court, for any private  
39           professional conservator appointed by the court.

40  
41       **(j) Expiration date**

42  
43           This rule is repealed effective July 1, 2008.