

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

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report Summary

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: December 5, 2007

SUBJECT: Probate: Education Requirements for Judicial Officers Assigned to Hear Probate Proceedings; Qualifications and Education Requirements for Probate Court Staff Attorneys, Examiners, and Investigators; and Qualifications and Education Requirements for Counsel Appointed in Conservatorships and Guardianships (amend Rule 10.481 of the California Rules of Court; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777) (Action Required)

Issue Statement

Legislation effective in 2007 added section 1456 to the Probate Code.¹ The new section requires the Judicial Council to adopt a rule of court, effective on or before January 1, 2008, to:

1. Prescribe mandatory education concerning probate conservatorships and guardianships for judicial officers regularly assigned to hear probate matters;
2. Establish qualifications and education requirements concerning probate conservatorships and guardianships for probate department staff positions (probate attorneys, probate examiners, and court investigators);
3. Establish qualifications and continuing education requirements for court-appointed attorneys for conservatees, proposed conservatees, and minors involved in guardianships; and

¹ Stats. 2006, ch. 493, § 3 (Assembly Bill 1363).

4. Impose reporting requirements to ensure compliance with section 1456.

Recommendation

1. In response to the mandate of Probate Code section 1456, the Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective on January 1, 2008:
 - a. Adopt rule 10.468 of the California Rules of Court to prescribe initial and continuing education concerning conservatorships and guardianships to be required of judicial officers regularly assigned to hear probate proceedings;
 - b. Adopt rules 10.478, 10.776, and 10.777 to establish and prescribe initial and continuing education to be required of probate court investigators, probate staff attorneys, and probate examiners; and the qualifications necessary to serve in these probate court staff positions;
 - c. Adopt rule 7.1101 to establish qualifications and continuing education to be required of counsel appointed by the court to represent conservatees and proposed conservatees in probate conservatorship proceedings and minors in probate guardianship matters; and
 - d. Amend rule 10.481 to facilitate the addition of the new rules concerning judicial officer and court staff education noted above.²
2. The Probate and Mental Health Advisory Committee also recommends that the Judicial Council:
 - a. Direct the Probate and Mental Health Advisory Committee and the Administrative Office of the Courts to review the management, scheduling, and disposition of probate proceedings in small courts and make recommendations for improvements to the Trial Court Presiding Judges and Court Executives Advisory Committees;

² This proposal follows the council's August 31, 2007 action on a proposal of the Governing Committee of the Center for Judicial Education and Research, *Judicial Branch Education: Minimum Education Requirements, Expectations, and Recommendations*, agenda item 10, council meeting of August 31, 2007. The Governing Committee's proposal included an amendment of rule 10.462; amendments and renumbering of rules 10.463, 10.464, and 10.471; and adoption of new rules 10.469, 10.471, 10.472, 10.479, and 10.491. The changes made by that proposal will be effective on January 1, 2008, the effective date also proposed here.

- b. Direct the Education Division/Center for Judicial Education and Research (CJER) to include recommendations concerning the probate education program established by the rules in this proposal in its required report to the council on the judicial branch education program, and instruct CJER to consult with the Trial Court Presiding Judges and Court Executives Advisory Committees concerning the probate education required of judicial officers and court staff by these rules; and
- c. Direct the Probate and Mental Health Advisory Committee and the Court Executives Advisory Committee to report to the Judicial Council no later than October of 2009, on the courts' experience with and recommendations for improvements in rule 10.777, concerning qualifications of probate court staff.

The text of the rules proposed for amendment and adoption follows this report at pages 30–48.

The text of Probate Code section 1456 follows this report at page 49.

Rationale for Recommendation

Judicial Council action on October 26, 2007

The Judicial Council considered this proposal at its meeting on October 26, 2007. The council instructed staff to return the proposal to the advisory committee with instructions for the committee to make recommendations that address concerns expressed at the council meeting about the impact on small courts of the provisions of proposed rules 7.1101 and 10.468 concerning, respectively, qualifications of counsel appointed by the court in conservatorships and guardianships, and mandatory conservatorship and guardianship education for judicial officers. The advisory committee was directed to consult with the Trial Court Presiding Judges Advisory Committee and relevant CJER committees and to report its recommendations to the council at its meeting of December 7, 2007.

In response to the council's direction, the advisory committee recommends revision of its proposal to authorize courts with four or fewer authorized judges to waive the qualifications for appointed counsel upon making certain findings and reduce by half the total and yearly hours of continuing education originally proposed for judicial officers responsible for hearing probate proceedings in these courts, and adoption of the recommendations described in paragraphs 2a and 2b above.

Revised rules consistent with the committee's recommendations were considered and approved by the Trial Court Presiding Judges Advisory Committee's

Executive Committee. CJER staff has been consulted concerning the revised proposal and has referred the proposal to the chairs of the Governing Committee of CJER, and the Probate Education Committee. The chairs of these committees have approved the revised proposal.

Executive and Planning Committee meeting of November 20, 2007

On November 20, 2007, the council's Executive and Planning Committee met to set the agenda for the council meeting of December 7, 2007. The committee decided to place this revised proposal on the discussion agenda for the council meeting.

During the course of the meeting, concerns were raised about the proposed qualifications for the probate examiner position. Rule 10.777(c) would establish those qualifications as:

1. A bachelor of arts or bachelor of science degree and two years of specified employment experience;
2. A paralegal certificate and four years of specified experience; or
3. A juris doctor degree and six months of specified experience.

The concerns expressed at the meeting were similar to those expressed in two public comments on rule 10.777(c) from senior court administrators.³ Both commentators recommended a work-experience alternative to the college or paralegal certificate requirement. One of the commentators recommended that the alternative experience should be prior court service.

In response to these concerns, the Probate and Mental Health Advisory Committee considered various additional qualification alternatives for examiners, including an additional method of qualifying for the examiner position by possessing a high school diploma or GED, plus four years' employment with increased responsibilities with a California superior court. This alternative was circulated to the members of the Probate and Mental Health Advisory Committee with a request that the members approve or disapprove it. A majority of the members of the advisory committee, however, disapproved of this alternative because they believe that the higher educational requirements in the proposed rule are necessary to perform the duties of this position, and are a better response to the legislative intent behind section 1456.

³ The comments of Ms. Mary Malk, Probate and Mental Health Unit Manager, Superior Court, County of Orange, and Ms. Mary Beth Todd, Court Executive Officer, Superior Court, County of Calaveras. These are, respectively, comment nos. 14 and 24 in the attached comment chart.

After further consideration, the advisory committee developed a second alternative. This version of rule 10.777(c) would add possession of an Associate of Arts degree as an alternative to the paralegal certificate in rule 10.777(c)(2), plus four years of specified employment experience. In addition, the advisory committee asks the council to direct it and the Court Executives Advisory Committee to report to the council in 2009, on the courts' experience with, and recommendations for improvements in, rule 10.777.

This version was approved by a majority of the members of the committee. No disapproving votes were received. This version is reflected in the text of rule 10.777(c) attached to this report, at page 47. As noted above, the request for council direction is also included.

Judicial officer education

Proposed rule 10.468 would require judicial officers of all courts regularly assigned to hear probate proceedings to complete 6 hours of education on probate conservatorships and guardianships, including court-supervised fiduciary accounting, within six months of beginning the assignment. Judicial officers of courts with 5 or more authorized judges would also be required to complete 18 hours of continuing education every three years on these topics while in the probate assignment, with a minimum of 6 hours the first year. Judicial officers of courts with four or fewer authorized judges would be required to complete 9 hours of continuing education on these topics every three years, with a minimum of 3 hours per year. The initial, or content-based, education required by the rule could be provided by the AOC Education Division/Center for Judicial Education and Research (CJER), the California Judges Association, or the judicial officer's court. Self-study would not be permitted, but the education could be by distance-learning means, including broadcasts, videoconferences, or on-line coursework.

Continuing education for judicial officers could be provided by AOC-sponsored education programs, a provider listed in rule 10.481(a), or a provider approved by the presiding judge of the judicial officer's court as meeting the criteria specified in rule 10.481(b). Other details of this education, including record-keeping and reporting, would be consistent with the rules governing judicial officer education adopted effective January 1, 2007.

Court probate staff education

Probate Code section 1456(a)(3) identifies three specific court probate department staff positions that must participate in initial and continuing education. These are court-employed or -contracted investigators, staff examiners, and staff attorneys.

Proposed rule 10.478 specifies the education requirements for those staff positions, referring to them respectively as court investigators (described in rule 10.478(a)(1)), probate attorneys (described in rule 10.478(a)(2)), and probate examiners (described in rule 10.478(a)(3)).

Court Investigators

Rule 10.478(b)(1) would require 18 hours of education within one year of an investigator's start date after January 1, 2008, in six general topics listed in the rule. Investigators would also be required to complete 12 hours of continuing education each year, beginning the first year after the year they started service, on some or all of the six general topics (rule 10.478(e)(1)).

Probate Staff Attorneys

Rule 10.478(c)(1) would require probate staff attorneys to complete 18 hours of initial education within six months of their start date after January 1, 2008, in probate-related topics, including conservatorships, guardianships, and court-supervised fiduciary accounting. Probate staff attorneys would also be required to complete 12 hours of continuing education each year thereafter in probate-related subjects, of which six hours must be in conservatorships, guardianships, and fiduciary accounting (rule 10.478(f)(1)).

Probate Examiners

Rule 10.478(d)(1) would require probate staff examiners to complete 30 hours of education within one year of their start date after January 1, 2008, in probate-related topics, of which 18 hours must be in conservatorships and guardianships, including fiduciary accounting. Examiners would be required in subsequent years to complete 12 hours of education each year, including a total of at least six hours of instruction on conservatorships, guardianships, and fiduciary accounting (rule 10.478(g)(1)).

The initial and continuing education for all three of these court positions could be provided by AOC-sponsored programs, an approved organization listed in rule 10.481(a), or a provider approved by the staff member's supervisor as satisfying the education criteria specified in rule 10.481(b). No self-study education would be permitted, but distance learning, such as broadcasts, videoconferences, or online coursework, would be allowed. (See, e.g., rule 10.478(b)(4).)

Qualifications of probate court staff

Proposed rules 10.776 and 10.777 would establish the qualifications necessary for court investigators, probate staff attorneys, and probate examiners. Rule 10.776 contains definitions only; all substantive provisions are found in rule 10.777.

The qualifications specified in rule 10.777 would apply to investigators, attorneys, and examiners who begin employment or enter into contracts to perform services for courts on or after January 1, 2008; current court staff members and those hired before January 1, 2008, who do not meet the qualifications would not lose their positions.

A court investigator would be required to possess a bachelor of arts or science degree in a science, including a social or behavioral science; liberal arts; or nursing from an accredited institution and two years' employment experience performing casework or investigations in a legal, financial, law enforcement, or social services setting (rule 10.777(a)).

A probate staff attorney would be required to be an active member of the State Bar of California for five years, or a member for two years together with five years' current or former membership in the equivalent organization in another state or admission to practice in the highest court of another state or in a court of the United States, plus a total of at least two years of employment, before or after State Bar admission, in any combination of seven types of employment (rule 10.777(b)(2)(A)–(G)).

A probate examiner would be required to have (1) a bachelor of arts or science degree in any field from an accredited educational institution and a minimum of two years' experience with any combination of a court; a public or private law office; a public administrator, public guardian, or public conservator; or a private professional fiduciary; or (2) a paralegal certificate or an associate of arts degree from an accredited institution and a minimum of four years of the experience listed above; or (3) a juris doctor degree from an institution approved by the American Bar Association or accredited by the Committee of Bar Examiners of the State Bar of California and a minimum of six months employment with one of the employers listed above (rule 10.777(c)).

Small courts, those with eight or fewer authorized judges, could waive the qualifications required for these court staff positions if they cannot find suitable qualified candidates or for other grounds of hardship (rule 10.777(e)).

Qualifications and continuing education of appointed counsel

Probate Code sections 1470 and 1471 authorize, or in some circumstances require, courts to appoint counsel for minors or conservatees or proposed conservatees in guardianship and conservatorship proceedings. Probate Code section 1456 requires the Judicial Council to establish the qualifications and continuing education to be required of attorneys appointed by the court in these proceedings. Rule 7.1101 is proposed for this purpose.

The new rule is divided into two parts. The first would establish qualifications for counsel appointed from private practice; the second would define the qualifications of deputy public defenders directly performing services on court appointments of a county's public defender.

Private counsel appointed by the court on or after January 1, 2008, would have to be active members of the State Bar of California for a period of three years immediately before the date of appointment, with no disciplinary proceedings pending or discipline imposed for the previous 12 months, and:

1. For appointments in guardianships, must have represented at least three minors in guardianships, juvenile court dependency or delinquency proceedings, or Family Code custody proceedings or must be qualified to be appointed to represent children in juvenile court dependency proceedings or Family Code custody proceedings under applicable local and statewide rules of court.
2. For appointments in conservatorships, must have represented at least three conservatees or proposed conservatees in probate or Lanterman-Petris-Short Act mental-health conservatorships or must have completed any three of five tasks specified in the rule.
3. All private counsel must be covered by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year.

A deputy public defender directly responsible for performing legal services for minors, conservatees, or proposed conservatees on appointment of the county public defender would be required under rule 7.1101(c) to be an active member of the State Bar for a minimum of three years immediately before the date of appointment and must either qualify under the provisions applicable to private counsel or have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or mental health patients in postcertification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act. He or she must also be insured for professional liability at the same level as private counsel but may be covered at that level by the county's self-insurance program.

Rule 7.1101(d) contains transitional provisions governing counsel appointed before January 1, 2008, in matters pending after that date.

Rule 7.1101(e) would provide that courts with four or fewer authorized judges may waive the qualification requirements for appointed counsel, other than the professional liability insurance or self-insurance requirements, upon making

written findings supporting the waiver, including a description of all alternatives considered, including appointment of qualified counsel from adjacent counties.

Rule 7.1101(f) would require counsel to complete 3 hours of education each calendar year that qualifies for mandatory continuing education credit for State Bar-certified specialists in estate planning, trust, and probate law. Beginning in 2009, each appointed counsel would be required to certify to the court before the end of March of each year that he or she has completed the continuing education required for the preceding calendar year (rule 7.1101(h)(3)).

The qualifications and continuing education requirements in rule 7.1101 are minimums. Courts are free to establish higher qualification or continuing education requirements, including higher insurance requirements, or require initial training or education and may impose other requirements, including an application by private counsel (rule 7.1101(g)).

Alternative Actions Considered

Probate Code section 1456 requires the adoption of at least one rule of court establishing qualifications and education requirements for judicial officers, court staff, and appointed counsel. No alternatives to adoption of rules governing these topics were considered. Many specific alternatives to the options selected in these proposed rules were considered at various stages of the rules' development.

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, probate-interest sections of the State Bar and local bar associations, and representatives of other organizations interested in probate matters generally and conservatorships and the problems of the impaired elderly specifically, in addition to court executives, presiding judges, individuals, and organizations more generally interested in court-related issues.

Twenty-seven comments were received. Most were unfavorable or would approve the proposal only if modified. A chart showing the comments received and the committee's responses follows this report, beginning at page 52.

Requests for exemptions from these rules for smaller courts were made by three judges. These comments eventually led to the Judicial Council action described above, and the changes in rules 7.1101 and 10.468 applicable to courts with four or fewer authorized judges in response to that action. Concerns about the education requirements for probate examiners expressed by two court administrators and reiterated at the council's Executive and Planning Committee meeting on November 20, 2007, led to the above-described changes in rule 10.777(c).

Other comments also led to changes in the rules, including an amendment of rule 7.1101 to provide that attorneys authorized to represent children in juvenile court dependency and family court custody proceedings are eligible for appointment as counsel for minors in guardianships.

Implementation Requirements and Costs

These proposed rules will increase courts' employment and recruiting expenses for court staff. The record-keeping and reporting costs for judicial officer and court staff education should also increase, as will the direct costs incurred by the AOC and the courts to provide or pay for the education. The cost incurred by the estates of conservatees and wards, wards' parents, and counties for appointed counsel with higher than current qualifications should also increase. On the other hand, if more experienced attorneys are appointed in these cases, these higher costs should be offset to some extent by greater efficiency.

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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: December 5, 2007

SUBJECT: Probate: Education Requirements for Judicial Officers Assigned to Hear Probate Proceedings; Qualifications and Education Requirements for Probate Court Staff Attorneys, Examiners, and Investigators; and Qualifications and Education Requirements for Counsel Appointed in Conservatorships and Guardianships (amend rule 10.481 of the California Rules of Court; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777) (Action Required)

Issue Statement

In 2006, the Judicial Council adopted rules of court to establish statewide education requirements or expectations for judicial officers and initial and continuing education requirements for court executives and employees.⁴ This effort followed the council's adoption, effective January 1, 1999, of standards of judicial administration establishing special education standards for judicial officers assigned to hear juvenile dependency proceedings and family law matters.⁵

These rules and standards do not provide for subject-specific initial or continuing education of judicial officers assigned to hear proceedings under the Probate Code, including probate conservatorship and guardianship matters. However, judicial officer and court staff subject-matter education in these fields and other significant

⁴ Cal. Rules of Court, rules 10.451, 10.452, 10.461–10.464, and 10.471, adopted effective January 1, 2007, replacing repealed rule 10.501 (rule 970 before the June 30, 2006, reorganization of the California Rules of Court). Some of these rules have been amended or renumbered in the proposal adopted by the council in August of this year, to become effective on January 1, 2008. See footnote 2 above.

⁵ Cal. Stds. Jud. Admin., Stds. 10.12(b) and (c), and 10.13(2) and (3).

changes in court operations affecting conservatorships and guardianships will be required beginning in 2008.

Legislation effective in 2007 added section 1456 to the Probate Code. The new section requires the Judicial Council, after consulting with organizations specified in the statute,⁶ to adopt a rule of court, effective on or before January 1, 2008, to:

1. Prescribe mandatory education—specifically including the number of hours to be required upon commencing the assignment and thereafter over a three-year period on an ongoing basis—concerning probate conservatorships and guardianships for judicial officers regularly assigned to hear probate matters;
2. Establish qualifications and education requirements—specifically including the number of hours required each year—concerning probate conservatorships and guardianships for probate department staff positions (probate attorneys, probate examiners, and court investigators);
3. Establish qualifications and continuing education requirements for court-appointed attorneys for conservatees, proposed conservatees, and minors involved in guardianships; and
4. Impose reporting requirements to ensure compliance with section 1456.

Rationale for Recommendation

Judicial Council action at meeting of October 26, 2007

This proposal was presented to the Judicial Council as a discussion item at the council's meeting on October 26, 2007. The proposal was placed on the discussion calendar in part because of concerns about the impact of the rules on small courts. These concerns focused on the qualifications of counsel appointed in conservatorships and guardianships under proposed rule 7.1101 and education required of judicial officers regularly assigned to hear probate proceedings under proposed rule 10.468.

⁶ See footnote 1 above. Section 1456 is a small part of a much larger piece of legislation, the Omnibus Conservatorship and Guardianship Reform Act of 2006 (Stats. 2006, chapters 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363).) The organizations mentioned in the statute are the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the National Association of Professional Geriatric Care Managers (section 1456(b)).

These concerns were raised at the council meeting by council members Hon. Dennis E. Murray, and Hon. Ira Kaufman, Superior Court judges from the counties of Tehama and Plumas, respectively.

The council instructed advisory committee staff to return the proposal to the advisory committee with instructions for the committee to make recommendations that address the concerns expressed at the council meeting. The advisory committee was directed to consult with the Trial Court Presiding Judges Advisory Committee and relevant CJER committees and to report its recommendations to the council at its meeting of December 7, 2007.

The advisory committee's response to the council's action

The advisory committee revised rules 7.1101 and 10.468 and, on November 2, 2007, submitted the revised rules to the Trial Court Presiding Judges Advisory Committee's Executive Committee. Judges Murray and Kaufman participated in the meeting of the executive committee. The executive committee unanimously approved the revised rules, and Judges Murray and Kaufman expressed approval of the revisions. The changes are described below and are reflected in the rule text attached to this report.

Rule 7.1101, Qualifications of Appointed Counsel

Rule 7.1101 as considered by the Judicial Council on October 27, 2007, required identical qualifications for counsel to be appointed in conservatorships and guardianships by all courts, and did not authorize small courts to waive the requirements. In response to the concerns expressed by the council at that meeting, the advisory committee recommends the following changes:

1. A new subdivision (e) would be added to rule 7.1101 to authorize small courts, those with four or fewer authorized judges, to waive the qualification requirements for counsel appointed under Probate Code sections 1470 and 1471 specified in rule 7.1101(b) for private counsel or rule 7.1101(c) for deputy public defenders.

The professional liability insurance or self-insurance requirements for private counsel and deputy public defenders in rules 7.1101(b)(3) and 7.1101(c)(2) could not be waived (see rule 7.1101(e)(2)).

The court would be required to make express written findings showing the circumstances supporting the waiver and disclosing all alternatives considered, including appointment of counsel qualified under the rule from adjacent counties

and other alternatives not selected.⁷ The waiver provision is modeled after the small-court waiver provision in proposed rule 10.777(e), concerning qualifications of court probate department staff, except that the definition of small courts in that provision, courts with eight or fewer authorized judges, would be reduced to four or fewer authorized judges in rule 7.1101.

The advisory committee believes that the difference in these two definitions of a small court is appropriate. The committee believes that a small court should have the widest degree of latitude and discretion in the selection of its permanent staff, and that the issues of local availability of qualified permanent court staff and local availability of qualified counsel for appointment in a relatively few number of individual cases for limited periods of time are sufficiently dissimilar to support the difference.

2. The transition provisions of rule 7.1101(d) and the certification deadlines specified in that subdivision and in revised rule 7.1101(h) would be extended one month, from the end of February to the end of March.

This change is recommended because courts and appointed counsel will have less time to adjust to the requirements of this rule because of the rule's delayed adoption date.

Executive and Planning Committee meeting of November 20, 2007

On November 20, 2007, the council's Executive and Planning Committee met to set the agenda for the council meeting of December 7, 2007. The committee decided to place this revised proposal on the discussion agenda for the council meeting.

During the course of the meeting, concerns were raised about the proposed qualifications for the probate examiner position. Rule 10.777(c) would establish those qualifications as:

⁷ The advisory committee contemplates that the written finding required by the rule would be placed in an administrative file, not a case file, similarly to the small-court waiver finding concerning court staff qualifications under rule 10.777(e), and that the finding would apply only so long as the factual circumstances supporting it are present. Subdivision (h) of the revised rule requires each attorney eligible for appointment to certify that he or she satisfies the qualifications required by the rule. Under rule 7.1101(h)(4), the certification would be placed in an administrative file for the certifying attorney, not in a case file. The written finding concerning an attorney appointed under the waiver authority of the rule would be placed in a similar file. Likewise, a private attorney's application to be considered for appointment would be placed in a similar file. (See rule 7.1101(g), which authorizes a court to require an application by private counsel.)

1. A bachelor of arts or bachelor of science degree and two years of specified employment experience;
2. A paralegal certificate and four years of specified experience; or
3. A juris doctor degree and six months of specified experience.

The concerns expressed at the meeting were similar to those expressed in two public comments on rule 10.777(c) from senior court administrators.⁸ Both commentators recommended a work-experience alternative to the college or paralegal certificate requirement. One of the commentators recommended that the alternative experience should be prior court service.

In response to these concerns, the Probate and Mental Health Advisory Committee considered various additional qualification alternatives for examiners, including an additional method of qualifying for the examiner position by possessing a high school diploma or GED, plus four years' employment with increased responsibilities with a California superior court. This alternative was circulated to the members of the Probate and Mental Health Advisory Committee with a request that the members approve or disapprove it. A majority of the members of the advisory committee, however, disapproved of this alternative because they believe that the higher educational requirements in the proposed rule are necessary to perform the duties of this position, and are a better response to the legislative intent behind section 1456.

After further consideration, the advisory committee developed a second alternative. This version of rule 10.777(c) would add possession of an Associate of Arts degree as an alternative to the paralegal certificate in rule 10.777(c)(2), plus four years of specified employment experience. In addition, the advisory committee asks the council to direct it and the Court Executives Advisory Committee to report to the council in 2009, on the courts' experience with, and recommendations for improvements in, rule 10.777.⁹

This version was approved by a majority of the members of the committee. No disapproving votes were received. This version is reflected in the text of rule 10.777(c) attached to this report, at page 47. As noted above, the request for council direction is also included.

⁸ The comments of Ms. Mary Malk, Probate and Mental Health Unit Manager, Superior Court, County of Orange, and Ms. Mary Beth Todd, Court Executive Officer, Superior Court, County of Calaveras. These are, respectively, comment nos. 14 and 24 in the attached comment chart.

⁹ See recommendation 2c above. A deadline of October, 2009 was selected in order to give the rule a year of operation after July 2008, when increased funding for court operations under the Omnibus Act, vetoed by the governor in the 2007-2008 judicial branch budget, is expected to become available for the first time.

Rule 10.468, Judicial Officer Probate Education

The draft of this rule considered by the Judicial Council in October would have required 18 hours of continuing education over three years in guardianships and conservatorships, including court-supervised fiduciary accounting, with a minimum 6 hours required each year, for all judicial officers “regularly assigned to hear probate proceedings,” a term defined in rule 10.468(a)(5) and based on the language of Probate Code section 1456(a)(2), which requires the education identified in this rule to be completed by a “judge who is regularly assigned to hear probate matters.”

The three-year period would begin the year after completion of the initial education required by rule 10.468(b) on commencement of the probate assignment or would begin in the first year of the assignment if the judicial officer is exempt from the initial education. The required hours would be proportionately reduced for judicial officers whose probate assignment is for less than three years.

1. The definition of “judicial officer regularly assigned to hear probate proceedings” in rule 10.468(a)(5) would be modified to include, in courts with four or fewer authorized judges, a judicial officer designated by the presiding judge.

This modification is a response to a comment made by Judge Murray at the council meeting of October 26, 2007, that small courts cannot always determine which judicial officer hears the majority of probate matters in the court, the only definition in the rule then before the council that would have applied to small courts without branch departments or dedicated full-time probate departments.

2. A new paragraph (2) would be added to rule 10.468(c), concerning continuing probate education of judicial officers, to cut in half the required number of hours of probate education that would be required of judicial officers in courts with four or fewer authorized judges. The reduction would be from six hours per year and 18 hours over a three year period to three hours per year and nine hours over a three year period.

Judicial officers of courts with more than four authorized judges would continue to be required to complete 18 hours of continuing education in each three-year education period. A minimum of six hours would continue to be required in the first year of the period for judicial officers from these courts. However, the per-year minimum requirements would be eliminated for the last two years of the period for these judicial officers, to encourage them to plan their probate education

around CJER's Probate Institute, and to give them more flexibility in the design of their education program.¹⁰

In addition to the rule changes discussed above, the advisory committee recommends the following:

1. The Probate and Mental Health Advisory Committee and the Administrative Office of the Courts be directed by the Judicial Council to review the management, scheduling, and disposition of probate proceedings in small courts and make recommendations for improvements to the Trial Court Presiding Judges and Court Executives Advisory Committees.

This recommendation is made in response to a suggestion made by Chief Justice George at the council meeting of October 26, 2007 concerning the possibility of cross-assigning judges from other courts to facilitate disposition of probate matters in the smallest courts. Recommended improvements could include scheduling of probate matters in small courts that would make the use of assigned judges with probate experience, whether cross-assigned sitting judges or assigned retired judges, more feasible, productive, and useful to small courts on a systematic and regular basis.

2. The Education Division/CJER be requested to include recommendations concerning the probate education program established by the rules in this proposal in its required report to the Judicial Council on the judicial branch education program, and that CJER be instructed to consult with the Trial Court Presiding Judges and Court Executives Advisory Committees concerning the probate education required of judicial officers and court staff by these rules.

CJER has been directed by the council to report in 2011 on the first three years of the judicial branch education program, 2007 through 2010.¹¹ This time period

¹⁰ The advisory committee initially proposed an identical requirement of six hours of education the first year and elimination of the per-year hourly requirements for the second and third years of the continuing education period for all judicial officers, including those in small courts. The judges present at the meeting of the Trial Court Presiding Judges Executive Committee, including Judges Murray and Kaufman, unanimously expressed a preference for a three-hour minimum yearly for small courts instead of a six-hour requirement the first year and no minimum hourly requirements for the next two years.

¹¹ The council's direction to CJER and its governing committee was made at the council meeting of October 20, 2006, Discussion Item E. Rule 10.50(c)(3), part of the rule establishing the Governing Committee for the Center for Judicial Education and Research, requires the Governing Committee to evaluate the effectiveness of judicial branch education, the quality of participation, the efficiency of delivery, and the impact on service to the public.

would also encompass the first two years of the probate education portion of the branch program.

CJER staff has been consulted concerning the revised proposal and has referred the proposal to the chairs of the Governing Committee of CJER and the Probate Education Committee. The chairs of these committees have approved the revised proposal.

Development of proposed rules

After consulting with representatives of the organizations mentioned in section 1456, representatives of the Professional Fiduciary Association of California, CJER staff, and the Probate Conservatorship Task Force appointed by the Chief Justice in 2006, the advisory committee has developed and now proposes new rules of court concerning education of judicial officers assigned to hear probate matters, court probate department staff qualifications and education, and qualifications and education requirements for counsel appointed by the court in conservatorship and guardianship matters.

Judicial Officer Education

Rule 10.468 would be added to chapter 8 of division 2 of title 10 of the California Rules of Court, a chapter added this year to accommodate the judicial branch education rules mentioned in footnote 3 above. This rule would require judicial officers regularly assigned to hear probate proceedings to complete 6 hours of education on probate conservatorships and guardianships, including court-supervised fiduciary accounting, within six months after beginning the assignment.¹² These judicial officers would also be required to complete 18 hours

¹² See rule 10.468(b)(1). Initial assignment education is referred to as “content-based” education, continuing education as “hours-based.” These terms are used in the existing judicial and court staff education rules 10.462 and 10.464 (renumbered as rule 10.474 in this proposal) and are also used to describe initial and continuing education of probate court staff under proposed rule 10.478, discussed below.

Judicial officers under rule 10.468(a)(1) and (2) are superior court judges and subordinate judicial officers as the latter are defined in rule 10.701(a), including commissioners, referees, and hearing officers.

A judicial officer regularly assigned to hear probate proceedings within the meaning of the rule is a judicial officer who is (1) assigned to a dedicated probate department where probate proceedings are heard on a full-time basis; (2) responsible for hearing most of the probate proceedings filed in a court that does not have a full-time probate department; (3) responsible for hearing probate proceedings in a regular basis in a branch or other department of the court remote from the main or central courthouse, whether or not he or she hears other types of matters in that department; or (4) in courts with four or fewer authorized judges, designated by the presiding judge (rule 10.468(a)(5)). Probate proceedings include decedents’ estates, guardianships and conservatorships and trust proceedings under divisions 4 and 9 of the Probate Code, and other matters governed by that code and the rules in title 7 of the California Rules of Court (rule 10.468(a)(4)).

of education every three years on these topics, with a minimum of 6 hours per year (rule 10.468(c)(1)). However, the first period of continuing education would be for a two-year period beginning on January 1, 2008, with the total number of hours prorated, to match the first three-year continuing education reporting period for trial court judges under rule 10.462(c), which began on January 1, 2007.

The initial, or content-based, education required by the rule could be provided by CJER, the California Judges Association, or the judicial officer's court. Self-study would not be permitted, but the education could be by distance-learning means, including broadcasts, videoconferences, or on-line coursework (rules 10.468(b)(3) and (4)).

Continuing education could be provided by AOC-sponsored education programs, a provider listed in rule 10.481(a)(current rule 10.471(a)), or a provider approved by the presiding judge of the judicial officer's court as meeting the criteria specified in rule 10.481(b) (current rule 10.471(b)).¹³

Rule 10.468 would address the reporting requirements required by Probate Code section 1456(a)(5) by incorporating the participation-tracking and record-keeping requirements for judicial officers under current rules 10.462(f) and (g) and by providing that presiding judges' records of judicial officer participation are subject to audit by the AOC under rule 10.462. This rule would also permit the AOC to require courts to report participation by affected judicial officers to ensure compliance with section 1456. (See rule 10.468(e).)

Court Probate Staff Education

Probate Code section 1456(a)(3) identifies three specific probate department court staff positions for mandatory initial and continuing education. These are court investigators, probate staff attorneys, and probate examiners.

Proposed rule 10.478 specifies the education requirements for these positions, referring to them respectively as court investigators (described in rule 10.478(a)(1)), probate attorneys (described in rule 10.478(a)(2)), and probate examiners (described in rule 10.478(a)(3)). Attorneys and examiners and attorneys covered by this rule are court employees. Court investigators may be court employees or persons working under contracts with courts.¹⁴

¹³ Rule 10.481(a) lists 22 approved providers of education to judicial officers under rule 10.462 and to court staff under rule 10.474. Approved providers include the AOC, California trial and appellate courts, the State Bar, local bar associations, the National Center for State Courts, Continuing Education of the Bar, and accredited colleges and universities.

¹⁴ Probate staff attorneys and examiners are not defined in section 1456 or in any other provision of the Probate Code. Court investigators covered by the proposed rule, however, are referred to in Probate Code section 1454(a) as officers or special appointees of the court and are assigned

Rule 10.478(b)(1) would require 18 hours of education within one year of a court investigator's start date after January 1, 2008, in six general topics listed in the rule.¹⁵ Investigators would also be required to complete 12 hours of continuing education each year, beginning the first year after the year they started service on some or all of the six general topics (rule 10.478(e)(1)).

Rule 10.478(c)(1) would require probate staff attorneys to complete 18 hours of initial education within six months of their start date after January 1, 2008, in probate-related topics, including conservatorships, guardianships, and court-supervised fiduciary accounting. They would be required to complete 12 hours of continuing education each year thereafter in probate-related subjects, of which 6 hours must be in conservatorships, guardianships, and fiduciary accounting (rule 10.478(f)(1)).

Rule 10.478(d)(1) would require probate examiners to complete 30 hours of education within one year of their start date after January 1, 2008, in probate-related topics, of which 18 hours must be in conservatorships and guardianships, including fiduciary accounting. Examiners would be required in subsequent years to complete 12 hours of education each year, including a total of at least six hours of instruction on conservatorships, guardianships, and accounting (rule 10.478(g)(1)).

The initial and continuing education for all three of these court positions could be provided by AOC-sponsored programs, an approved organization listed in rule current rule 10.471(a)—renumbered in this proposal as rule 10.481(a) and amended by adding the California Association of Superior Court Investigators to the list—or a provider approved by the staff member's supervisor as satisfying the education criteria specified in amended rule 10.481(b). No self-study education

specific functions in numerous provisions of that code. Representatives of the California Association of Superior Court Investigators, one of the organizations with which the advisory committee consulted in the development of this rule, reported to the committee that although many court investigators are directly employed by courts, many also work under contract. Whether employed or working under contract, court investigators work for courts on a full-time basis; they are not appointed out of private practices on a case-by case basis.

¹⁵ The six topics are (1) court process and legal proceedings; (2) child abuse and neglect and the effect of domestic violence on children for guardianship investigators or elder and dependent adult abuse for conservatorship investigators; (3) medical issues; (4) access to and use of criminal-record information, confidentiality, ethics, and conflicts of interest; (5) accessing and evaluating community resources for children and mentally-impaired elderly or developmentally disabled adults; and (6) interviewing children and persons with mental function or communication deficits.

would be permitted, but distance learning, such as broadcasts, videoconferences, or online coursework, would be allowed. (See, e.g., rule 10.478(b)(4).)

Qualifications of Probate Court Staff

Proposed rules 10.776 and 10.777, placed in a new chapter 7 of division 4 of title 10 of the California Rules of Court because the surrounding chapters and the rules contained in them are not closely related to the subject matter of these rules, would establish the qualifications necessary for court investigators, probate staff attorneys, and probate examiners.¹⁶ Rule 10.776 contains definitions only; all substantive provisions are placed in rule 10.777.

The qualifications specified in rule 10.777 would apply to investigators, attorneys, and examiners who begin employment or enter into contracts to perform services for courts on or after January 1, 2008; current court staff members and those hired before January 1, 2008, who do not meet the qualifications would not lose their positions.

A court investigator would be required to possess a bachelor of arts or science degree in a science, including a social or behavioral science; liberal arts; or nursing from an accredited institution and two years' employment experience performing casework or investigations in a legal, financial, law enforcement, or social services setting (rule 10.777(a)).

A probate staff attorney would be required to be an active member of the State Bar of California for a period of five years, or a member for two years together with five years' current or former membership in the equivalent organization in another state or admission to practice in the highest court of another state or in a court of the United States, plus a total of at least two years of employment, pre-or post-State Bar admission, in any combination of seven types of employment (rule 10.777(b)(2)(A)–(G)).¹⁷

A probate examiner would be required to have (1) a bachelor of arts or science degree in any field from an accredited educational institution and a minimum of

¹⁶ Division 4, "Trial Court Administration, commences with rule 10.601. Existing chapters 7–12, commencing with rule 10.780, would be renumbered as chapters 8–13. None of the rules in these chapters would require renumbering.

¹⁷ The seven types of employment are (1) court staff attorney (any field), (2) probate department intern (minimum six-month period), (3) probate examiner or court investigator, (4) attorney in a probate-related public or private legal practice, (5) deputy public guardian or conservator, (6) child or adult protective services worker or juvenile probation officer, or (6) private professional fiduciary appointed by a court or an employee of such a fiduciary or a bank or trust company with significant fiduciary responsibilities, including responsibilities for court accountings.

two years' experience with any combination of a court; a public or private law office; a public administrator, public guardian, or public conservator; or a private professional fiduciary; or (2) a paralegal certificate or an associate of arts degree from an accredited institution and a minimum of four years of the experience listed above; or (3) a juris doctor degree from an institution approved by the American Bar Association or accredited by the Committee of Bar Examiners of the State Bar of California and a minimum of six months employment with one of the employers listed above (rule 10.777(c)).

Small courts, those with eight or fewer judges, could waive the qualifications required for these court staff positions if they could not find suitable qualified candidates or for other grounds of hardship. These courts would be required to make written findings showing the circumstances supporting the waiver and disclosing all alternatives considered including alternatives not selected (rule 10.777(e)).

Qualifications and Continuing Education of Appointed Counsel

Probate Code sections 1470 and 1471 authorize, or in some circumstances require, courts to appoint counsel for minors and conservatees or proposed conservatees in guardianship and conservatorship proceedings. Probate Code section 1456 requires the Judicial Council to establish the qualifications and continuing education to be required of attorneys appointed by the court in these proceedings. Rule 7.1101, placed in a new chapter 23 of title 7 of the rules of court, is proposed for this purpose.

The new rule is divided into two parts. The first would establish qualifications for counsel appointed from private practice; the second would define the qualifications of deputy public defenders directly performing services on appointments of a county's public defender.¹⁸

Private counsel appointed by the court on or after January 1, 2008 would have to be admitted to the State Bar of California for a period of three years immediately before the date of appointment, with no disciplinary proceedings pending or discipline imposed for the previous 12 months, and:

¹⁸ Public defenders may be appointed to represent conservatees or proposed conservatees under Probate Code sections 1471–1472. Section 1470, which authorizes discretionary appointment of counsel in both guardianships and conservatorships, refers to “private legal counsel.” However, an appellate court has interpreted section 1470 to authorize the court to appoint the public defender for an indigent conservatee under section 1470 and Government Code section 27706(d) (*Conservatorship of Berry* (1989) 209 Cal.App.3d 706, 721–723). The court's analysis in *Berry* would fully apply to appointments of public defenders to represent indigent minors in guardianships because both Probate Code section 1470 and Government Code section 27706(d) refer to guardianships as well as conservatorships.

1. For appointments in guardianships, must have represented at least three minors in guardianships, juvenile court dependency or delinquency proceedings, or Family Code custody proceedings, or must be qualified to be appointed to represent children in juvenile court dependency proceedings or Family Code custody proceedings under applicable local and statewide rules of court.¹⁹
2. For appointments in conservatorships, must have represented at least three conservatees or proposed conservatees in probate or Lanterman-Petris-Short Act mental-health conservatorships, or must have completed any three of five tasks specified in the rule.²⁰

Private counsel must also be covered by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year.

A deputy public defender directly responsible for the performance of legal services for minors or conservatees on appointment of a county's public defender would be required under rule 7.1101(c) to be an active member of the State Bar for a minimum of three years immediately before the date of appointment and qualified under the provisions of the rule applicable to private counsel or must have at least three years' experience representing minors in juvenile dependency or delinquency proceedings or mental health patients in post-certification judicial proceedings or conservatorships under the Lanterman-Petris-Short Act. He or she must also be insured for professional liability at the same level as private counsel, but may be covered at that level by the county's self-insurance program.

Rule 7.1101(d) contains transitional provisions governing counsel appointed before January 1, 2008, in matters pending after that date. These attorneys would be authorized to continue to represent their clients through March 2008, even though they do not meet the qualifications provided in the rule. After March 2008, the court would be authorized to retain or replace them, or appoint qualified co-

¹⁹ For juvenile court dependency proceedings, rule 5.660 of the Cal. Rules of Court and local rules adopted under it; for Family Code custody proceedings, new rule 5.242, adopted by the Judicial Council on October 26, 2007, effective January 1, 2008.

²⁰ See proposed rule 7.1101(b)(2)(B). The five tasks are (1) representation of three petitioners for the appointment of a conservator; (2) representation of a petitioner, a conservatee, or an interested third party in two contested probate or Lanterman-Petris-Short Act conservatorships; (3) representation of any party for whom the court could appoint counsel under the Probate Code; (4) representation of a fiduciary in three separate cases for settlement of a court-filed account and report in a conservatorship, guardianship, decedent's estate, or trust proceeding; and (5) preparation of five wills or trusts, and five durable powers of attorney for health care and asset management.

counsel to assist these attorneys in the pending matters. During the first three months of 2008, the court could appoint counsel in new matters who have not certified their qualifications at the time of appointment, but the court would be required to replace appointed counsel who have not filed their qualification certificates before April 1, 2008.²¹

Rule 7.1101(e) authorizes small courts, those with four or fewer authorized judges, to waive the qualifications for appointed counsel required by the rule, except for the professional liability insurance or-self-insurance requirements of rules 7.1101(b)(3) and 7.1101(c)(2). Written findings supporting the waiver would be required, similar to the findings required for waiving the qualifications of court staff in rule 10.777(e), but specifically including the alternative of appointing qualified counsel from adjacent counties.

Rule 7.1101(f) would require counsel to complete three hours of education each calendar year that qualifies for mandatory continuing education credit for State Bar-certified specialists in estate planning, trust, and probate law. Beginning in 2009, each appointed counsel would be required to certify to the court before the end of March of each year that he or she has completed the continuing education required for the preceding calendar year (rule 7.1101(h)(3)).

The qualifications and continuing education requirements in rule 7.1101 are minimums. Courts would be free to establish higher qualification or continuing education requirements, including higher insurance requirements, or require initial training or education and may impose other requirements, including an application by private counsel (rule 7.1101(g)).

Alternative Actions Considered

Probate Code section 1456 requires the adoption of at least one rule of court establishing the qualifications and education requirements for judicial officers, court staff, and appointed counsel. Inaction in the face of this legislative mandate was not an option. However, the statute gave the advisory committee wide latitude in the details. Many specific alternatives at various stages of development of these rules were considered, including the alternatives contained in the proposed rules as they were presented to the council on October 26, 2007, discussed above.

²¹ Rule 7.1101(h) would require counsel eligible for appointment by the court before January 1, 2008, to certify in writing before April 1, 2008, that they satisfy the qualifications required under the rule to remain eligible for an appointment on or after the latter date. Beginning on April 1, 2008, counsel would be required to certify that they are qualified under the rule before becoming eligible for an appointment. The advisory committee intends to develop and propose for adoption effective July 1, 2008, a form certificate of qualifications under the rule, but the initial certifications due under the rule before that date would be attorney-drafted documents.

Section 1456(b) required the Judicial Council to consult with specified organizations in the formulation of the rules required by the section.²² A subcommittee of the advisory committee met with representatives designated by each organization mentioned in the statute in working groups dedicated to each subject area of these rules affecting each organization. The committee also consulted with representatives of the Professional Fiduciary Association of California (PFAC),²³ and solicited the views of experienced senior probate staff attorneys. These consultations led to position papers from the working groups that were presented to the advisory committee, from which draft rule proposals were developed.

The advisory committee also presented its rule draft proposals concerning judicial officer and court staff education to the Probate Conservatorship Task Force and senior staff to the task force from CJER. These steps were taken to ensure that the proposed court probate staff education rules are consistent with the new trial court education rules adopted in 2006 and are compatible with the recommendations of the task force concerning judicial branch conservatorship education.²⁴ Numerous alternatives concerning all aspects of these rules were discussed during these deliberations, leading eventually to the proposal that was circulated for public comment and the rules presented to the council in October, revised in response to the comments received. Included among these alternatives were more continuing education for appointed counsel and less initial and continuing education for some of the court staff positions. The views of distinguished private appointed counsel and public defenders, representative judicial officers with probate experience, and each of the court staff positions were given great weight in the deliberations.

Comments From Interested Parties

This proposal was circulated for comment in a special cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters and assistance to unrepresented persons, probate-interest sections of the State Bar and local bar associations, and representatives of other organizations interested in probate matters generally and conservatorships and the problems of

²² See footnote 5 above.

²³ Much after the fact, section 1456 has been amended in 2007 to add PFAC to the list of organizations to be consulted in the development of these rules. See Stats. 2007, ch. 553 (Assembly Bill 1727), § 2.

²⁴ The Probate Conservatorship Task Force created a subcommittee focusing on judicial branch education, staffed by a representative of CJER experienced in probate matters. Its report to the task force, included in the task force's final report accepted by the Judicial Council on October 26, 2007, recommends adoption of the rules proposed here concerning judicial officer, court staff, and appointed counsel education.

the impaired elderly specifically, in addition to court executives, presiding judges, individuals, and organizations with a more general interest in court-related issues.

Twenty seven comments were received. Most were unfavorable or would approve the proposal only if modified. A chart showing the comments received and the committee's responses follows the rule text, beginning at page 52.

Judges Dennis E. Murray, C. Anders Holmer, and Ira R. Kaufman commented extensively concerning application of these rules to small courts. Judge Murray's comment centers on the qualifications for appointed counsel in rule 7.1101. He advises that small counties would not have enough qualified attorneys for court appointments under the rule because most attorneys rely on appointments for exposure to this type of case but could not satisfy the requirements for the appointments. All three judges also advise that small courts do not have enough probate matters generally, and guardianships and conservatorships specifically, to support the proposed requirement of 18 hours of education in a three-year period for judicial officers. Judge Holmer requests an exemption from the education requirements for judicial officers of courts with seven or fewer judges. He recommends that biannual participation in the AOC's "Cow Counties" programs should be sufficient for compliance with the proposed rule for these courts.

The action of the council on October 26, 2007, discussed above, was in response to the concerns expressed by Judges Murray, Holmer, and Kaufman. The revised rules now have exceptions from the judicial officer education and qualifications requirements for appointed counsel for courts with four or fewer authorized judges. The new probate education rules and the existing general education rules also have provisions for extensions of time for judicial officers to complete required or recommended education. Proposed rule 10.777, concerning qualifications of probate court staff, has an exemption for courts with eight or fewer judges (rule 10.777(e)).

Advisory committee staff has communicated with CJER about including courses qualified for judicial probate education under rule 10.468 in future "Cow Counties" programs.²⁵

²⁵ Attached at pages 50–51 is a schedule of judicial officer conservatorship and guardianship education tentatively planned for 2008-2009, provided by CJER. The schedule includes 3 hours of qualifying education at the Cow County Institute. The schedule shows approximately 34 hours of qualifying face-to-face continuing education proposed for 2008 and six hours of broadcast qualifying education calendared for 2008. In addition, the schedule shows a number of 2007 broadcast programs that can still be completed remotely. The Probate Overview, item 1 in the face-to-face education category, is CJER's primary vehicle for initial probate education for judicial officers new to the assignment (see rule 10.468(b)).

Executives from the Superior Courts of Orange and Calaveras Counties advise that qualifications for court investigators and examiners in subdivisions (a) and (c) of rule 10.777 are too restrictive. They recommend that the rule be modified to permit equivalent employment experience to be considered in lieu of a college education. These recommendations are based on concerns that the pool of qualified candidates might be too small if this change is not made. The advisory committee did not adopt these recommendations and noted that the rule permits a certified paralegal to qualify for an examiner position with four years employment experience instead of the two years of experience required for a college graduate. (Paralegal certification programs are usually two year programs and do not lead to a bachelor's degree.). The rule was changed, however, to permit a person with a juris doctor degree and only six months of the employment required under the rule to be considered for an examiner position. According to a committee member from the court in Orange County, applicants for examiner positions with that degree are common in that county. As noted above, in response to concerns similar to those expressed by the Orange and Calaveras commentators, rule 10.777(c)(2) was also revised to add possession of an associate of arts degree as an alternative to a paralegal certificate, and the advisory committee requests the Judicial Council to direct it and the Court Executives Advisory Committee to review and report on the operation of the rule, and make recommendations for improvements, by October of 2009.

Mr. Michael Harig, a probate investigator from Riverside, recommends that the requirement of five years' membership in the State Bar of California for probate staff attorneys under proposed rule 10.777(b) be modified to permit an attorney with five years' experience in another state to become eligible on admission to the State Bar of California. Mr. Harig also asks that the college-degree requirement be changed to permit a bachelor's degree in biological sciences instead of a degree in liberal arts. The committee agreed in part with these recommendations and modified the rule to permit an attorney to be considered for the probate attorney staff position with two years' membership in the State Bar of California and five years' membership in the equivalent organization of another state or authority to practice in the highest court of another state or in a court of the United States. The committee also amended the rule to permit a degree in any science, not just a behavioral or social science, but elected not to delete the liberal arts degree from the education requirement.

Ms. Jennifer Kelleher, the directing attorney of Legal Advocates for Children and Youth in San Jose, is concerned that the qualifications for appointed counsel should be modified to include attorneys with experience working for an agency representing parties in guardianship proceedings. This recommendation led to a change in proposed rule 7.1101 to provide that attorneys qualified for appointment

to represent children in juvenile court dependency proceedings or Family Code custody proceedings would qualify for appointment in guardianships.

Implementation Requirements and Costs

The advisory committee believes that these rules will increase costs incurred by courts for staff recruiting and employment. The record-keeping and reporting costs for judicial officer and court staff education should also increase, as will the direct costs incurred by the AOC and the courts to provide or pay for the education. To the extent that rule 7.1101 results in the appointment of counsel with higher qualifications, the cost of counsel payable by estates of conservatees and wards, wards' parents, and counties should also increase. On the other hand, if attorneys with higher qualifications and greater experience are appointed in these cases, these higher costs should be offset to some extent by greater efficiency.

Recommendation

1. In response to the mandate of Probate Code section 1456, the Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective on January 1, 2008:
 - a. Adopt rule 10.468 of the California Rules of Court to prescribe initial and continuing education concerning conservatorships and guardianships to be required of judicial officers regularly assigned to hear probate proceedings;
 - b. Adopt rules 10.478, 10.776, and 10.777 to establish and prescribe initial and continuing education to be required of probate court investigators, probate staff attorneys, and probate examiners; and the qualifications necessary to serve in these probate court staff positions;
 - c. Adopt rule 7.1101 to establish qualifications and continuing education to be required of counsel appointed by the court to represent conservatees and proposed conservatees in probate conservatorship proceedings and minors in probate guardianship matters; and
 - d. Amend rule 10.481 to facilitate the addition of the new rules concerning judicial officer and court staff education noted above.²⁶

²⁶ This proposal follows the council's August 31, 2007 action on a proposal of the Governing Committee of the Center for Judicial Education and Research, *Judicial Branch Education: Minimum Education Requirements, Expectations, and Recommendations*, agenda item 10, council meeting of August 31, 2007. The Governing Committee's proposal included an amendment of rule 10.462; amendments and renumbering of rules 10.463, 10.464, and 10.471; and adoption of new rules 10.469, 10.471, 10.472, 10.479, and 10.491. The changes made by that proposal will be effective on January 1, 2008, the effective date also proposed here.

2. The Probate and Mental Health Advisory Committee also recommends that the Judicial Council:
 - a. Direct the Probate and Mental Health Advisory Committee and the Administrative Office of the Courts to review the management, scheduling, and disposition of probate proceedings in small courts and make recommendations for improvements to the Trial Court Presiding Judges and Court Executives Advisory Committees;
 - b. Direct the Education Division/Center for Judicial Education and Research (CJER) to include recommendations concerning the probate education program established by the rules in this proposal in its required report to the council on the judicial branch education program, and instruct CJER to consult with the Trial Court Presiding Judges and Court Executives Advisory Committees concerning the probate education required of judicial officers and court staff by these rules; and
 - c. Direct the Probate and Mental Health Advisory Committee and the Court Executives Advisory Committee to report to the Judicial Council no later than October of 2009, on the courts' experience with and recommendations for improvements in rule 10.777, concerning qualifications of probate court staff.

The text of the rules proposed for amendment, renumbering, and adoption follows this report at pages 30–48.

The text of Probate Code section 1456 follows this report at page 49.

Attachments

1 Title 7.

2
3 Probate Rules

4
5 Chapter 23. Court-Appointed Counsel in Probate Proceedings

6
7 **Rule 7.1101. Qualifications and continuing education required of counsel**
8 **appointed by the court in guardianships and conservatorships**

9
10 **(a) Definitions**

11
12 As used in this rule, the following terms have the meanings stated below:

13
14 (1) “Appointed counsel” or “counsel appointed by the court” are legal
15 counsel appointed by the court under Probate Code sections 1470 or
16 1471, including counsel in private practice and deputy public defenders
17 directly responsible for the performance of legal services under the
18 court’s appointment of a county’s public defender.

19
20 (2) A “probate guardianship” or “probate conservatorship” is a
21 guardianship or conservatorship proceeding under division 4 of the
22 Probate Code.

23
24 (3) “LPS” and “LPS Act” refer to the Lanterman-Petris-Short Act, Welfare
25 and Institutions Code section 5000 et seq.

26
27 (4) An “LPS conservatorship” is a conservatorship proceeding for a
28 gravely disabled person under chapter 3 of the LPS Act, Welfare and
29 Institutions Code sections 5350–5371.

30
31 (5) A “contested matter” in a probate or LPS conservatorship proceeding is
32 a matter that requires a noticed hearing and in which written objections
33 are filed by any party or made by the conservatee or proposed
34 conservatee orally in open court.

35
36 (6) “AOC” is the Administrative Office of the Courts.

37
38 **(b) Qualifications of appointed counsel in private practice**

39
40 Except as provided in this rule, each counsel in private practice appointed by
41 the court on or after January 1, 2008, must be an active member of the State
42 Bar of California for at least three years immediately before the date of
43 appointment, with no disciplinary proceedings pending and no discipline

1 imposed within the 12 months immediately preceding the date of first
2 availability for appointment after January 1, 2008; and

3
4 (1) *Appointments to represent minors in guardianships*

5
6 For an appointment to represent a minor in a guardianship:

7
8 (A) Within the five years immediately before the date of first
9 availability for appointment after January 1, 2008, must have
10 represented at least three wards or proposed wards in probate
11 guardianships, three children in juvenile court dependency or
12 delinquency proceedings, or three children in custody proceedings
13 under the Family Code; or

14
15 (B) At the time of appointment, must be qualified:

16
17 (i) For appointments to represent children in juvenile
18 dependency proceedings under rule 5.660 and the court's
19 local rules governing court-appointed juvenile court
20 dependency counsel; or

21
22 (ii) For appointments to represent children in custody
23 proceedings under the Family Code under rule 5.242,
24 including the alternative experience requirements of rule
25 5.242(g).

26
27 (C) Counsel qualified for appointments in guardianships under (B)
28 must satisfy the continuing education requirements of this rule in
29 addition to the education or training requirements of the rules
30 mentioned in (B).

31
32 (2) *Appointments to represent conservatees or proposed conservatees*

33
34 For an appointment to represent a conservatee or a proposed
35 conservatee, within the five years immediately before the date of first
36 availability for appointment after January 1, 2008, counsel in private
37 practice must have:

38
39 (A) Represented at least three conservatees or proposed conservatees
40 in either probate or LPS conservatorships; or

41
42 (B) Completed any three of the following five tasks:
43

- 1 (i) Represented petitioners for the appointment of a conservator
2 at commencement of three probate conservatorship
3 proceedings, from initial contact with the petitioner through
4 the hearing and issuance of Letters of Conservatorship;
5
6 (ii) Represented a petitioner, a conservatee or a proposed
7 conservatee, or an interested third party in two contested
8 probate or LPS conservatorship matters. A contested matter
9 that qualifies under this item and also qualifies under (i)
10 may be applied toward satisfaction of both items;
11
12 (iii) Represented a party for whom the court could appoint legal
13 counsel in a total of three matters described in Probate Code
14 sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or
15 3205;
16
17 (iv) Represented fiduciaries in three separate cases for settlement
18 of a court-filed account and report, through filing, hearing,
19 and settlement, in any combination of probate
20 conservatorships or guardianships, decedent's estates, or
21 trust proceedings under division 9 of the Probate Code; or
22
23 (v) Prepared five wills or trusts, five durable powers of attorney
24 for health care, and five durable powers of attorney for asset
25 management.

26
27 (3) Private counsel qualified under (1) or (2) must also be covered by
28 professional liability insurance satisfactory to the court in the amount
29 of at least \$100,000 per claim and \$300,000 per year.
30

31 **(c) Qualifications of deputy public defenders performing legal services on**
32 **court appointments of the public defender**
33

- 34 (1) Except as provided in this rule, beginning on January 1, 2008, each
35 county deputy public defender with direct responsibility for the
36 performance of legal services in a particular case on the appointment of
37 the county public defender under Probate Code sections 1470 or 1471
38 must be an active member of the State Bar of California for at least
39 three years immediately before the date of appointment; and either
40
41 (A) Satisfy the experience requirements for private counsel in (b)(1)
42 for appointments in guardianships or (b)(2) for appointments in
43 conservatorships; or

1
2 (B) Have a minimum of three years' experience representing minors
3 in juvenile dependency or delinquency proceedings or patients in
4 post-certification judicial proceedings or conservatorships under
5 the LPS Act.
6

7 (2) A deputy public defender qualified under (1) must also be covered by
8 professional liability insurance satisfactory to the court in the amount
9 of at least \$100,000 per claim and \$300,000 per year, or be covered for
10 professional liability at an equivalent level by a self-insurance program
11 for the professional employees of his or her county.
12

13 (3) A deputy public defender who is not qualified under this rule may
14 periodically substitute for a qualified deputy public defender with direct
15 responsibility for the performance of legal services in a particular case.
16 In that event, the county public defender or his or her designee, who
17 may be the qualified supervisor, must certify to the court that the
18 substitute deputy is working under the direct supervision of a deputy
19 public defender who is qualified under this rule.
20

21 **(d) Transitional provisions on qualifications**
22

23 (1) Counsel appointed before January 1, 2008, may continue to represent
24 their clients through March 2008, whether or not they are qualified
25 under (b) or (c). After March 2008, through conclusion of these
26 matters, the court may retain or replace appointed counsel who are not
27 qualified under (b) or (c) or may appoint qualified co-counsel to assist
28 them.
29

30 (2) In January, February, and March 2008, the court may appoint counsel
31 in new matters who have not filed the certification of qualifications
32 required under (h) at the time of appointment but must replace counsel
33 appointed under this paragraph who have not filed the certificate before
34 April 1, 2008.
35

36 **(e) Exemption for small courts**
37

38 (1) Except as provided in (2), the qualifications required under (b) or (c)
39 may be waived by a court with four or fewer authorized judges if it
40 cannot find qualified counsel or for other grounds of hardship.
41

42 (2) A court may not waive the insurance or self-insurance requirements of
43 (b)(3) or (c)(2).

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

(f) Continuing education of appointed counsel

Beginning on January 1, 2008, counsel appointed by the court must complete three hours of education each calendar year that qualifies for mandatory continuing legal education credit for State Bar–certified specialists in estate planning, trust, and probate law.

(g) Additional court-imposed qualifications, education, and other requirements

The qualifications in (b) and (c) and the continuing education requirement in (f) are minimums. A court may establish higher qualification or continuing education requirements, including insurance requirements; require initial education or training; and impose other requirements, including an application by private counsel.

(h) Certification of qualifications and continuing education

(1) Each counsel appointed or eligible for appointment by the court before January 1, 2008, including deputy public defenders, must certify to the court in writing before April 1, 2008, that he or she satisfies the qualifications under (b) or (c) to be eligible for a new appointment on or after that date.

(2) After March 2008, each counsel must certify to the court that he or she is qualified under (b) or (c) before becoming eligible for an appointment under this rule.

(3) Beginning in 2009, each appointed counsel must certify to the court before the end of March of each year that he or she has completed the continuing education required for the preceding calendar year.

(4) Certifications required under this subdivision must be submitted to the court but are not to be filed or lodged in a case file.

1
2 **(i) Reporting**

3
4 The AOC may require courts to report appointed counsel’s qualifications and
5 completion of continuing education required by this rule to ensure
6 compliance with Probate Code section 1456.

7
8 **Title 10**

9
10 **Judicial Administration Rules**

11
12
13 **Rule 10.468. Content-based and hours-based education for superior court**
14 **judges and subordinate judicial officers regularly assigned to hear**
15 **probate proceedings**

16
17 **(a) Definitions**

18
19 As used in this rule, the following terms have the meanings stated below:

- 20
21 (1) “Judge” means a judge of the superior court.
- 22
23 (2) “Subordinate judicial officer” has the meaning specified in rule
24 10.701(a).
- 25
26 (3) “Judicial officer” means a judge or a subordinate judicial officer.
- 27
28 (4) “Probate proceedings” are decedents’ estates, guardianships and
29 conservatorships under division 4 of the Probate Code, trust
30 proceedings under division 9 of the Probate Code, and other matters
31 governed by provisions of that code and the rules in title 7 of the
32 California Rules of Court.
- 33
34 (5) A judicial officer “regularly assigned to hear probate proceedings” is a
35 judicial officer who is:
- 36
37 (A) Assigned to a dedicated probate department where probate
38 proceedings are customarily heard on a full-time basis;
- 39
40 (B) Responsible for hearing most of the probate proceedings filed in a
41 court that does not have a dedicated probate department; or
42

- 1 (C) Responsible for hearing probate proceedings on a regular basis in
2 a department in a branch or other location remote from the main
3 or central courthouse, whether or not he or she also hears other
4 kinds of matters in that department and whether or not there is a
5 dedicated probate department in the main or central courthouse;
6 or
7
8 (D) Designated by the presiding judge of a court with four or fewer
9 authorized judges.

10
11 (6) “AOC” is the Administrative Office of the Courts.

12
13 (7) “CJER” is the AOC Education Division/Center for Judicial Education
14 and Research.

15
16 (8) “CJA” is the California Judges Association.

17
18 **(b) Content-based requirements**

19
20 (1) Each judicial officer beginning a regular assignment to hear probate
21 proceedings after the effective date of this rule—unless he or she is
22 returning to this assignment after less than two years in another
23 assignment—must complete, as soon as possible but not to exceed six
24 months from the assignment’s commencement date, 6 hours of
25 education on probate guardianships and conservatorships, including
26 court-supervised fiduciary accounting.

27
28 (2) The education required in (1) is in addition to the New Judge
29 Orientation program for new judicial officers and the B. E. Witkin
30 Judicial College required under rule 10.462(c)(1)(A) and (C) and may
31 be applied toward satisfaction of the 30 hours of continuing education
32 expected of judges and required of subordinate judicial officers under
33 rule 10.462(d).

34
35 (3) The education required in (1) must be provided by CJER, CJA, or the
36 judicial officer’s court. CJER is responsible for identifying content for
37 this education and will share the identified content with CJA and the
38 courts.

39
40 (4) The education required in (1) may be by traditional (face to face) or
41 distance-learning means, such as broadcasts, videoconferences, or
42 online coursework, but may not be by self-study.
43

1 **(c) Hours-based continuing education**

- 2
- 3 (1) In a court with five or more authorized judges, each judicial officer
4 regularly assigned to hear probate proceedings must complete 18 hours
5 of continuing education every three years, with a minimum of six hours
6 required in the first year, on probate guardianships and
7 conservatorships, including court-supervised fiduciary accounting. The
8 three-year period begins on January 1 of the year following the judicial
9 officer's completion of the education required in (b)(1) or, if he or she
10 is exempt from that education, on January 1 of the year the assignment
11 commenced after the effective date of this rule.
- 12
- 13 (2) In a court with four or fewer authorized judges, each judicial officer
14 regularly assigned to hear probate proceedings must complete nine
15 hours of continuing education every three years, with a minimum of
16 three hours per year, on probate guardianships and conservatorships,
17 including court-supervised fiduciary accounting. The three-year period
18 begins on January 1 of the year following the judicial officer's
19 completion of the education required in (b)(1) or, if he or she is exempt
20 from that education, on January 1 of the year the assignment
21 commenced after the effective date of this rule.
- 22
- 23 (3) The first continuing education period for judicial officers who were
24 regularly assigned to hear probate proceedings before the effective date
25 of this rule and who continue in the assignment after that date is two
26 years, from January 1, 2008, through December 31, 2009, rather than
27 three years. The continuing education requirements in (1) are prorated
28 for the first continuing education under this paragraph. The first full
29 three-year period of continuing education for judicial officers under this
30 paragraph begins on January 1, 2010.
- 31
- 32 (4) The number of hours of education required in (1) or (2) may be reduced
33 proportionately for judicial officers whose regular assignment to hear
34 probate proceedings is for a period of less than three years.
- 35
- 36 (5) The education required in (1) or (2) may be applied toward satisfaction
37 of the 30 hours of continuing education expected of judges or required
38 of subordinate judicial officers under rule 10.462(d).
- 39
- 40 (6) A judicial officer may fulfill the education requirement in (1) or (2)
41 through AOC-sponsored education, a provider listed in rule 10.481(a),
42 or a provider approved by the judicial officer's presiding judge as
43 meeting the education criteria specified in rule 10.481(b).

1
2 (7) The education required in (1) or (2) may be by traditional (face-to-face)
3 or distance-learning means, such as broadcasts, videoconferences, or
4 online coursework but may not be by self-study.

5
6 (8) A judicial officer who serves as faculty for a California court-based
7 audience, as defined in rule 10.462(d)(4), for education required in (1)
8 or (2) may be credited with three hours of participation for each hour of
9 presentation the first time a course is given and two hours for each hour
10 of presentation each subsequent time the course is given.

11
12 **(d) Extension of time**

13
14 The provisions of rule 10.462(e) concerning extensions of time apply to the
15 content-based and hours-based education required under (b) and (c) of this
16 rule.

17
18 **(e) Record keeping and reporting**

19
20 (1) The provisions of rule 10.462(f) and (g) concerning, respectively,
21 tracking participation, record keeping, and summarizing participation
22 by judges and tracking participation by subordinate judicial officers,
23 apply to the education required under this rule.

24
25 (2) Presiding judges' records of judicial officer participation in the
26 education required by this rule are subject to audit by the AOC under
27 rule 10.462. The AOC may require courts to report participation by
28 judicial officers in the education required by this rule to ensure
29 compliance with Probate Code section 1456.

30
31
32 **Rule 10.478. Content-based and hours-based education for court**
33 **investigators, probate attorneys, and probate examiners**

34
35 **(a) Definitions**

36
37 As used in this rule, the following terms have the meanings specified below,
38 unless the context or subject matter otherwise require:

39
40 (1) A "court investigator" is a person described in Probate Code section
41 1454(a) employed by or under contract with a court to provide the
42 investigative services for the court required or authorized by law in

1 guardianships, conservatorships, and other protective proceedings
2 under division 4 of the Probate Code;

3
4 (2) A “probate attorney” is an active member of the State Bar of California
5 who is employed by a court to perform the functions of a probate
6 examiner and also to provide legal analysis, recommendations, advice,
7 and other services to the court pertaining to probate proceedings;

8
9 (3) A “probate examiner” is a person employed by a court to review filings
10 in probate proceedings in order to assist the court and the parties to get
11 the filed matters properly ready for consideration by the court in
12 accordance with the requirements of the Probate Code, the rules in title
13 7 of the California Rules of Court, and the court’s local rules;

14
15 (4) “Probate proceedings” are decedents’ estates, guardianships and
16 conservatorships under division 4 of the Probate Code, trust
17 proceedings under division 9 of the Probate Code, and other matters
18 governed by provisions of that code and the rules in title 7 of the
19 California Rules of Court;

20
21 (5) “AOC” is the Administrative Office of the Courts;

22
23 (6) “CJER” is the AOC Education Division/Center for Judicial Education
24 and Research.

25
26 **(b) Content-based requirements for court investigators**

27
28 (1) Each court investigator must complete 18 hours of education within
29 one year of his or her start date after the effective date of this rule. The
30 education must include the following general topics:

31
32 (A) Court process and legal proceedings;

33
34 (B) Child abuse and neglect and the effect of domestic violence on
35 children (guardianship investigators); elder and dependent adult
36 abuse, including undue influence and other forms of financial
37 abuse (conservatorship investigators);

38
39 (C) Medical issues;

40
41 (D) Access to and use of criminal-record information, confidentiality,
42 ethics, conflicts of interest;

1 (E) Accessing and evaluating community resources for children and
2 mentally impaired elderly or developmentally disabled adults; and

3
4 (F) Interviewing children and persons with mental function or
5 communication deficits.

6
7 (2) A court investigator may fulfill the education requirement in (1)
8 through AOC-sponsored education, a provider listed in rule 10.481(a),
9 or a provider approved by the court executive officer or the court
10 investigator's supervisor as meeting the education criteria specified in
11 rule 10.481(b).

12
13 (3) The education required in (1) may be applied to the specific-job portion
14 of the orientation course required for all new court employees under
15 rule 10.474(b)(2)(D) and the continuing education required for all
16 nonmanagerial or nonsupervisory court employees under rule
17 10.474(c)(2).

18
19 (4) The education required in (1) may be by traditional (face-to-face) or
20 distance-learning means, such as broadcasts, videoconferences, or on-
21 line coursework, but may not be by self-study.

22
23 **(c) Content-based education for probate attorneys**

24
25 (1) Each probate attorney must complete 18 hours of education within six
26 months of his or her start date after January 1, 2008, in probate-related
27 topics, including guardianships, conservatorships, and court-supervised
28 fiduciary accounting.

29
30 (2) A probate attorney may fulfill the education requirement in (1) through
31 AOC-sponsored education, a provider listed in rule 10.481(a), or a
32 provider approved by the court executive officer or the probate
33 attorney's supervisor as meeting the education criteria specified in rule
34 10.481(b).

35
36 (3) The education required in (1) may be applied to the specific-job portion
37 of the orientation course required for all new court employees under
38 rule 10.474(b)(2)(D) and the continuing education required for all
39 nonmanagerial or nonsupervisory court employees under rule
40 10.474(c)(2).

41

1 (4) The education required in (1) may be by traditional (face-to-face) or
2 distance-learning means, such as broadcasts, videoconferences, or on-
3 line coursework, but may not be by self-study.
4

5 **(d) Content-based education for probate examiners**
6

7 (1) Each probate examiner must complete 30 hours of education within one
8 year of his or her start date after January 1, 2008, in probate-related
9 topics, of which 18 hours must be in guardianships and
10 conservatorships, including court-appointed fiduciary accounting.
11

12 (2) A probate examiner may fulfill the education requirement in (1)
13 through AOC-sponsored education, a provider listed in rule 10.481(a),
14 or a provider approved by the court executive officer or the probate
15 examiner's supervisor as meeting the education criteria specified in rule
16 10.481(b).
17

18 (3) The education required in (1) may be applied to the specific-job portion
19 of the orientation course required for all new court employees under
20 rule 10.474(b)(2)(D) and the continuing education required for all
21 nonmanagerial or nonsupervisory court employees under rule
22 10.474(c)(2).
23

24 (4) The education required in (1) may be by traditional (face-to-face) or
25 distance-learning means, such as broadcasts, videoconferences, or
26 online coursework, but may not be by self-study.
27

28 **(e) Hours-based education for court investigators**
29

30 (1) Each court investigator must complete 12 hours of continuing
31 education on some or all of the general topics listed in (b)(1) each
32 calendar year. For court investigators employed by or performing
33 services under contract with the court before the effective date of this
34 rule, the first calendar year the education is required begins on January
35 1, 2008. For court investigators who begin their employment or
36 performance of services under contract with the court after the effective
37 date of this rule, the first year this education is required begins on
38 January 1 of the year immediately following completion of the
39 education required in (b).
40

41 (2) A court investigator may fulfill the education requirement in (1)
42 through AOC-sponsored education, a provider listed in rule 10.481(a),
43 or a provider approved by the court executive officer or the court

1 investigator's supervisor as meeting the education criteria specified in
2 rule 10.481(b).

3
4 (3) The education required in (1) may be applied to the continuing
5 education required for all nonmanagerial or nonsupervisory court
6 employees under rule 10.474(c)(2).

7
8 (4) The education required in (1) may be by traditional (face-to-face) or
9 distance-learning means, such as broadcasts, videoconferences, or
10 online coursework, but may not be by self-study.

11
12 **(f) Hours-based education for probate attorneys**

13
14 (1) Each probate attorney must complete 12 hours of continuing education
15 each calendar year in probate-related subjects, of which six hours per
16 year must be in guardianships and conservatorships, including court-
17 supervised fiduciary accounting. For probate attorneys employed by or
18 performing services under contract with the court before the effective
19 date of this rule, the first calendar year the education is required begins
20 on January 1, 2008. For probate attorneys who begin their employment
21 with the court after the effective date of this rule, the first year this
22 education is required begins on January 1 of the year immediately
23 following completion of the education required in (c).

24
25 (2) A probate attorney may fulfill the education requirement in (1) through
26 AOC-sponsored education, a provider listed in rule 10.481(a), or a
27 provider approved by the court executive officer or the probate
28 attorney's supervisor as meeting the education criteria specified in rule
29 10.481(b).

30
31 (3) The education required in (1) may be applied to the continuing
32 education required for all nonmanagerial or nonsupervisory court
33 employees under rule 10.474(c)(2).

34
35 (4) The education required in (1) may be by traditional (face-to-face) or
36 distance-learning means, such as broadcasts, videoconferences, or
37 online coursework, but may not be by self-study.

38
39 **(g) Hours-based education for probate examiners**

40
41 (1) Each probate examiner must complete 12 hours of continuing education
42 each calendar year in probate-related subjects, of which six hours per
43 year must be in guardianships and conservatorships, including court-

1 appointed fiduciary accounting. For probate examiners employed by
2 the court before the effective date of this rule, the first calendar year the
3 education is required begins on January 1, 2008. For probate examiners
4 who begin their employment with the court after the effective date of
5 this rule, the first year this education is required begins on January 1 of
6 the year immediately following completion of the education required in
7 (d).

8
9 (2) A probate examiner may fulfill the education requirement in (1)
10 through AOC-sponsored education, a provider listed in rule 10.481(a),
11 or a provider approved by the court executive officer or the probate
12 examiner's supervisor as meeting the education criteria specified in rule
13 10.481(b).

14
15 (3) The education required in (1) may be applied to the continuing
16 education required for all nonmanagerial or nonsupervisory court
17 employees under rule 10.474(c)(2).

18
19 (4) The education required in (1) may be by traditional (face-to-face) or
20 distance-learning means, such as broadcasts, videoconferences, or
21 online coursework, but may not be by self-study.

22
23 **(h) Extension of time**

24
25 The provisions of rule 10.474(d) concerning extensions of time apply to the
26 content-based and hours-based education required under this rule.

27
28 **(i) Record keeping and reporting**

29
30 (1) The provisions of rule 10.474(e) concerning the responsibilities of
31 courts and participating court employees to keep records and track the
32 completion of educational requirements apply to the education required
33 under this rule.

34
35 (2) The AOC may require courts to report participation by court
36 investigators, probate attorneys, and probate examiners in the education
37 required by this rule as necessary to ensure compliance with Probate
38 Code section 1456.

39
40 **Rule 10.481. Approved providers; approved course criteria**

41
42 **(a) Approved providers**

1 Any education program offered by any of the following providers that is
2 relevant to the work of the courts or enhances the individual participant's
3 ability to perform his or her job may be applied toward the education
4 requirements and expectations stated in rules 10.461–10.479, except for the
5 requirements stated in rules 10.461(b), 10.462(b)(c), and 10.473(b), for
6 which specific providers are required

7
8 (1)–(26) * * *

9
10 (27) The Rutter Group; ~~and~~

11
12 (28) American Board of Trial Advocates; and

13
14 (29) California Association of Superior Court Investigators.

15
16 **(b) Approved education criteria**

17
18 Education is not limited to the approved providers listed in (a). Any
19 education from a provider not listed in (a) that is approved by the Chief
20 Justice, the administrative presiding justice, or the presiding judge as
21 meeting the criteria listed below may be applied toward the continuing
22 education expectations and requirements for justices, judges, and subordinate
23 judicial officers or requirements for clerk/administrators or court executive
24 officers. Similarly, any education from a provider not listed in (a) that is
25 approved by the clerk/administrator, the court executive officer, or the
26 employee's supervisor as meeting the criteria listed below may be applied
27 toward the orientation or continuing education requirements for managers,
28 supervisors, and other employees or the content-based or continuing
29 education for probate court investigators, probate attorneys, and probate
30 examiners in rule 10.478.

31
32 (1)–(2) * * *

33
34
35 **Division 4. Trial Court Administration**

36
37 **Chapter 7. Qualifications of Court Investigators, Probate Attorneys, and**
38 **Probate Examiners**

39
40 **Rule 10.776. Definitions**

41
42 As used in the rules in this chapter, the following terms have the meanings stated
43 below:

- 1
2 (1) A “court investigator” is a person described in Probate Code section 1454(a)
3 employed by or under contract with a court to provide the investigative
4 services for the court required or authorized by law in guardianships,
5 conservatorships, and other protective proceedings under Division 4 of the
6 Probate Code;
7
8 (2) A “probate examiner” is a person employed by a court to review filings in
9 probate proceedings in order to assist the court and the parties to get the filed
10 matters ready for consideration by the court in accordance with the
11 requirements of the Probate Code, title 7 of the California Rules of Court,
12 and the court’s local rules;
13
14 (3) A “probate attorney” is an active member of the State Bar of California who
15 is employed by a court to perform the functions of a probate examiner and
16 also to provide legal analysis, recommendations, advice, and other services to
17 the court pertaining to probate proceedings;
18
19 (4) “Probate proceedings” are decedents’ estates, guardianships and
20 conservatorships under division 4 of the Probate Code, trust proceedings
21 under division 9 of the Probate Code, and other matters governed by
22 provisions of that code and the rules in title 7 of the California Rules of
23 Court;
24
25 (5) An “accredited educational institution” is a college or university, including a
26 community or junior college, accredited by a regional accrediting
27 organization recognized by the Council for Higher Education Accreditation;
28 and
29
30 (6) “AOC” is the Administrative Office of the Courts.
31

32 **Rule 10.777. Qualifications of court investigators, probate attorneys, and**
33 **probate examiners**

34
35 **(a) Qualifications of court investigators**

36
37 Except as otherwise provided in this rule, a person who begins employment
38 with a court or enters into a contract to perform services with a court as a
39 court investigator on or after January 1, 2008, must:
40

- 41 (1) Have a bachelor of arts or bachelor of science degree in a science, a
42 social science, a behavioral science, liberal arts, or nursing from an

1 accredited educational institution; and

- 2
3 (2) Have a minimum of two years' employment experience performing
4 casework or investigations in a legal, financial, law enforcement, or
5 social services setting.

6
7 **(b) Qualifications of probate attorneys**

8
9 Except as otherwise provided in this rule, a person who begins employment
10 with a court as a probate attorney on or after January 1, 2008, must:

- 11
12 (1) Be an active member of the State Bar of California for:

13
14 (A) A minimum of five years; or

15
16 (B) A minimum of two years, plus a minimum of five years' current
17 or former active membership in the equivalent organization of
18 another state or eligibility to practice in the highest court of
19 another state or in a court of the United States; and

- 20
21 (2) Have a minimum of two years' total experience, before or after
22 admission as an active member of the State Bar of California, in one or
23 more of the following positions:

24
25 (A) Court-employed staff attorney;

26
27 (B) Intern, court probate department (minimum six-month period);

28
29 (C) Court-employed probate examiner or court-employed or court-
30 contracted court investigator;

31
32 (D) Attorney in a probate-related public or private legal practice;

33
34 (E) Deputy public guardian or conservator;

35
36 (F) Child protective services or adult protective services worker or
37 juvenile probation officer; or

38
39 (G) Private professional fiduciary appointed by a court or employee of
40 a private professional fiduciary or bank or trust company
41 appointed by a court, with significant fiduciary responsibilities,
42 including responsibility for court accountings.

1
2 **(c) Qualifications of probate examiners**

3
4 Except as otherwise provided in this rule, a person who begins employment
5 with a court as a probate examiner on or after January 1, 2008, must have:
6

- 7 (1) A bachelor of arts or bachelor of science degree from an accredited
8 educational institution and a minimum of two years' employment
9 experience with one or more of the following employers:
10
11 (A) A court;
12
13 (B) A public or private law office; or
14
15 (C) A public administrator, public guardian, public conservator,
16 or private professional fiduciary; or
17
18 (2) A paralegal certificate or an Associate of Arts degree from an
19 accredited educational institution and a minimum of a total of four
20 years' employment experience with one or more of the employers listed
21 in (1); or
22
23 (3) A juris doctor degree from an educational institution approved by the
24 American Bar Association or accredited by the Committee of Bar
25 Examiners of the State Bar of California and a minimum of six months'
26 employment experience with an employer listed in (1).
27

28 **(d) Additional court-imposed qualifications and requirements**

29
30 The qualifications in (a), (b), and (c) are minimums. A court may establish
31 higher qualification standards for any position covered by this rule and may
32 require applicants to comply with its customary hiring or personal-service
33 contracting practices, including written applications, personal references,
34 personal interviews, or entrance examinations.
35

36 **(e) Exemption for smaller courts**

37
38 The qualifications required under this rule may be waived by a court with
39 eight or fewer authorized judges if it cannot find suitable qualified
40 candidates for the positions covered by this rule or for other grounds of
41 hardship. A court electing to waive a qualification under this subdivision
42 must make express written findings showing the circumstances supporting

1 the waiver and disclosing all alternatives considered, including those not
2 selected.

3
4 **(f) Record keeping and reporting**

5
6 The AOC may require courts to report on the qualifications of the court
7 investigators, probate attorneys, or probate examiners hired or under contract
8 under this rule, and on waivers made under (e), as necessary to ensure
9 compliance with Probate Code section 1456.

10
11 **Chapter ~~7~~ 8. Alternative Dispute Resolution Programs**

12
13 **Chapter ~~8~~ 9. Trial Court Budget and Fiscal Management**

14
15 **Chapter ~~9~~ 10. Trial Court Records Management**

16
17 **Chapter ~~10~~ 11. Trial Court Automation**

18
19 **Chapter ~~11~~ 12. Trial Court Management of Civil Cases**

20
21 **Chapter ~~12~~ 13. Trial Court Management of Criminal Cases**
22

Probate Code section 1456

- (a) In addition to any other requirements that are part of the judicial branch education program, on or before January 1, 2008, the Judicial Council shall adopt a rule of court that shall do all of the following:
- (1) Specifies the qualifications of a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471.
 - (2) Specifies the number of hours of education in classes related to conservatorships or guardianships that a judge who is regularly assigned to hear probate matters shall complete, upon assuming the probate assignment, and then over a three-year period on an ongoing basis.
 - (3) Specifies the number of hours of education in classes related to conservatorships or guardianships that a court-employed staff attorney, examiner, and investigator, and any attorney appointed pursuant to Sections 1470 and 1471 shall complete each year.
 - (4) Specifies the particular subject matter that shall be included in the education required each year.
 - (5) Specifies reporting requirements to ensure compliance with this section.
- (b) In formulating the rule required by this section, the Judicial Council shall consult with interested parties, including, but not limited to, the California Judges Association, the California Association of Superior Court Investigators, the California Public Defenders Association, the County Counsels' Association of California, the State Bar of California, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

Probate Conservatorship and Guardianship—Judicial Education

2008-2009 Calendar (Tentative)

Note: One day the equivalent of about six hours of education. Viewing a broadcast, or the reproduction of a broadcast, such as video tape or DVD, are treated the same as traditional face-to-face education under the minimum education requirements and expectations for the California Judicial Branch.

I. Face-to-Face

1. ***Probate Overview***—This 4 ½-day course is being offered Jan. 7, 2008 and includes 6 hours for judges new to the assignment. Four Overview weeks are planned annually. For Probate, there is probably not sufficient demand to offer the full course more than 1 or 2 times a year. A 1-day “conservatorship and guardianship” training can be offered as an alternative to the full week course.
2. ***Probate and Mental Health Institute***—This 2-day program is being offered Feb. 27-29, 2008. It is the primary venue for face-to-face judicial education for probate judges, commissioners, attorneys and examiners. The content is broader than conservatorship and guardianship education. The 2008 Institute will be certified as offering 6 hours of conservatorship and guardianship education. This program is offered annually.
3. ***Cow County Institute***—This 2-day program will offer at least 3 hours of conservatorship and guardianship education in 2008. This program is offered annually for judges from small, mostly rural, courts.
4. ***Northern and Southern California Probate Meetings***—These 1-day programs may be offered in the Spring and Fall, and traditionally include an educational component of 1-3 hours, which could in part be devoted to conservatorship and guardianship education.
5. ***Continuing Judicial Studies Program (CJSP)***—Offered up to three times a year, this is a venue for judicial education for experienced judges on more advanced topics. For Summer 2008, we are proposing a 2-day course on the protection of elders (12 hours of conservatorship education).
6. ***Conservatorship and Guardianship Institute***—This new 2-day program is planned for September 2008. It will be the primary venue for face-to-face judicial education for court investigators. All of the content will satisfy the rule. Judges, commissioners, attorneys and examiners will be able to attend. This program will be offered annually.

II. Broadcasts

1. ***Probate Law Update (March 2007)***—This 1-hour broadcast by Commissioner Don Green was devoted mostly to the 2006 legislation on conservatorships and guardianships.
2. ***Probate Conservatorship/Guardianship-New Laws Implementation (March 2007)***—This 1-hour broadcast provided an overview of the new laws and some specifics that affected court staff, attorneys, examiners, and investigators with probate assignments.

3. ***New Court Investigator Responsibilities for Conservatorships (September 2007)***—This 2-part broadcast (3 hours) discussed new probate court investigator responsibilities under the Omnibus Conservatorship and Guardianship Reform Act, including new kinds of investigations, privacy and report writing.
4. ***Great Minds—Memory Loss and Aging (December 12, 2007)***—This 1-hour broadcast will cover memory loss as it occurs in the elderly and how it can result in personal and financial abuses that are directly related to diminishing capacities. This broadcast will focus on the causes of memory loss and the types of issues that come before the courts due to the resulting vulnerabilities.
5. The 2008 broadcast schedule is to be determined. A minimum of 6 hours is already calendared (2-part broadcast on April 15 and 2-part broadcast on June 4).

SP07-09

Probate: Education of Judicial Officers Regularly Assigned to Hear Probate Matters; Qualifications and Education of Probate Department Court Staff and Attorneys Appointed in Conservatorships and Guardianships (amend Rule 10.481 of the California Rules of Court; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777, effective January 1, 2008).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Therese F. Alvillar Occidental, California	A	N	Agree with proposed changes.	No response necessary.
2.	Ms. Donna R. Bashaw Immediate past President, National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California 92653	AM	Y	<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 bur in the spirit of appreciation for 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</p>	

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SP07-09

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				<p>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 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>Rule 7.1101 <u>Qualifications and continuing education required of counsel appointed by the court in guardianships and conservatorships</u></p> <p>The education of the probate court judge should be addressed somewhere. Often there is a judge placed on the probate court bench with no probate experience as a practitioner or as a judicial officer.</p> <p>Conclusions:</p> <p>We believe that many of the changes made are unnecessary and merely an over reaction to the L.A. Times 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 made it more expensive for the ward and conservatee and have effectively priced the</p>	<p>The education provisions applicable to judicial officers handling probate matters are contained in proposed rule 10.468, also part of this proposal.</p> <p>The advisory committee cannot respond to this comment, which appears more properly addressed to the Legislature.</p>

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SP07-09

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				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.	
3.	Hon. Ronald L. Bauer Judge of the Superior Court of Orange County; Chair, Rules and Forms Committee Santa Ana, California	AM	N	Agree with proposed changes if modified. I have the following question/comment regarding proposed Rule 10.777(c). The statement of qualifications for a Probate Examiner is ambiguous. Does the rule mean that an applicant must meet standard (1) and must also meet another standard, which can be either (2) or (3)? Or, does the rule mean that an applicant has the choice of either meeting standards (1) and (2) together, or meeting standard (3) alone? I appreciate that standard 3 incorporates a part of standard 2, and some may think that this aids in the interpretation of the rule, but it is still unclear.	The committee has revised rule 10.777(c) to clarify the provisions discussed by this commentator and to add another form of qualification: Possession of a JD degree from an institution approved by the American Bar Association or accredited by the Committee on Bar Examiners of the State Bar of California, plus six months' employment with one of the employers listed in this subdivision of the rule. The new rule text should be clear on the issue raised by Judge Bauer.

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4.	Mr. Joseph L. Chairez President, Orange County Bar Association Irvine, California	AM	Y	The proposed requirements for education requirements for judicial officers regularly assigned to hear probate matters; the qualifications and education requirements for probate court investigators, probate examiners, and probate staff attorneys; and the qualifications and education requirements appointed by the court in probate conservatorship and guardianship proceedings are too stringent and will result in a significant reduction of the number of qualified court personnel, public defenders, and private attorneys available in these proceedings.	The committee disagrees that the qualifications and education requirements are too stringent, after consultation in the development of these rules with judicial officers, private counsel and public defenders with experience as counsel appointed in probate matters, and representatives of each of the court staff positions affected by the requirements.
5.	Ms. Malea Chavez Staff Attorney Superior Court of San Francisco County San Francisco, California	A	Y	Agree with proposed changes.	No response necessary.
6.	Mr. Marc Hall Private Citizen Stockton, California	N	N	Do not agree with proposed changes. The heart of the problem with the protection of the elderly lies in the lack of enforcement of State policy. If the State would punish counties who have blatantly ignored State procedures then the counties would make sure that the people in those positions would execute their duties without exception.	The committee cannot respond to this comment because it does not address this proposal other than to state general disagreement with it.

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				At this time my father and I are involved in a battle with a conservator case in which state mandates have not been followed.	
7.	Mr. Michael Harig Probate Investigator II Superior Court of RiversideCounty Riverside, California	N	N	Do not agree with proposed changes. Regarding proposed rule 10.777(b), Qualifications of Probate Attorneys, appears to preclude immediate employment of an individual licensed in a sister state for a significant period of years and who subsequently is admitted to the California State Bar...under the proposed Rule, that individual would have to wait five years before being eligible for employment as a probate attorney. I am licensed in New York and Louisiana and have over 25 years experience in Probate Law. I have worked in this Court as a Probate Examiner & Investigator for 4 years. When I become a member of the California State Bar, I should not have to then wait five years to be eligible for employment as a Probate Attorney with the Court. There should be a provision for eligibility for such attorneys as myself. I recommend a change of Rule 10.777(b)(1), broken down to subsections (b)(1)(i), as proposed, and (b)(1)(ii)to read "or (ii) Be actively licensed to practice law and in good standing for a minimum of 5 years in a sister	The committee agrees with this comment. It has amended rule 710.777(b) to provide for a five years period of active membership in the State Bar of California, or

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				<p>state, and be a current active member of the State Bar of California." Thank you for your consideration</p> <p>Regarding Proposed Rule 10.777(a)(1) Qualifications of Probate Investigator, from personal experience, I have found my own Bachelor Degree in the Biological Sciences (such as my Pre-Med education and training) to be extremely helpful education and experience in assessing/evaluating physical and mental capacities of an individual, especially in understanding various medications being administered (i.e. psychotropics)--I suggest increasing the range of a BA or BS to include a degree in the Biological Sciences, and striking liberal arts (not necessarily helpful in dealing w/ either Conservatorships or Guardianships). From my own experience as an attorney with more than 25 years experience, it seems that the capability of "interviewing" someone is not an ability that is necessarily cultivated in just "two years employment experience performing...investigations in a legal...setting" Such experience could be limited to drafting discovery documents...</p>	<p>two years's active membership plus five years membership in an equivalent organization or admission to practice before the highest court of another state, or admission to practice before a court of the United States.</p> <p>The committee has modified rule 10.777(b)(1) to permit a bachelor's degree in a "science," in addition to a social science or behavioral science, but declines to be more specific as to the kind of science that would qualify.</p> <p>The committee also declines to eliminate the liberal arts degree. Courts will be able to select investigators from a larger pool of candidates if candidates with these degrees remain qualified under the rule.</p>

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				Proposed Rule 10.777(a)(2) should be expanded to require experience in actually interviewing third parties.	The committee agrees that prior interviewing experience might be valuable, but does not believe that the basic qualifications specified in the rule should expressly require it. An applicant with this experience could certainly emphasize it in the employment process, and courts might value it. In addition, courts are free under rule 10.777(d) to add this or any other specific higher qualification they consider important.
8.	Hon. C. Anders Holmer, Judge of the Superior Court of Nevada County Truckee, California	N	N	Do not agree with proposed changes. I'm a believer in education for judges. The problem here is the fact that I am, like many other judges in small courts, regularly assigned to everything. A small court exception must be created (7 judges or less) allowing bi annual attendance at Cow Counties as satisfactory compliance. I probably handle no more than 30 Probate cases annually.	The advisory committee has proposed modifications of rule 10.468 that would (1) reduce the continuing probate education requirement to 9 hours over three years and 3 hours per year for small courts, defined as those with 4 or fewer authorized judges; and (2) permit presiding judges of these courts to select the judicial officer who must complete the education required by the rule. Advisory committee staff has also

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SP07-09

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					consulted with CJER staff to facilitate inclusion of qualifying continuing probate education in Cow Counties programs, at least for the next several programs, so that attendance and participation in these programs will in fact provide qualifying education. In addition, all of the probate-related education required of judicial officers under these rules can be taken remotely, so disruption of small-court calendars and other operations should be minimized.
9.	Hon. Ira Kaufman, Judge of the Superior Court of Plumas County Quincy, California	AM	N	Agree with proposed changes if modified. This will be a disaster for the small courts. My court had based upon the latest statistics only 74 "probate" matters in a year. Included in this number are guardianships which I believe were the majority of the cases. It seems outrageous to me that a judge would have to spend 18 hours over three years in order to handle this small a caseload. Secondly in the small courts a judge could be handling family law, civil, juvenile and probate matters. Think about the educational requirements that would be necessary to fulfill	The advisory committee has proposed modifications of rule 10.468 that would (1) reduce the continuing probate education requirement to 9 hours over three years and 3 hours per year for small courts, defined as those with 4 or fewer authorized judges; and (2) permit presiding judges of these courts to select the judicial officer who must complete the

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				<p>the educational mandates if the judicial officer were to have to attend only mandatory educational sessions? Do we want well educated judges who are continuously in school or judicial officers who are on the bench? I know the goals are laudatory but this rule is impractical for the small courts.</p> <p>Lastly, it will be virtually impossible to find attorneys to handle these matters based upon the educational requirements. Please make an exception for the small courts. Thank you.</p>	<p>education required by the rule.</p> <p>The advisory committee has proposed a modification of rule 7.1101 that would authorize small courts (those with 4 or fewer authorized judges) to waive the qualifications (except the professional liability insurance or self-insurance requirements) for appointed counsel upon the making of certain findings.</p>
10.	Ms. Jennifer Kelleher Directing Attorney Legal Advocates for Children & Youth San Jose, California	AM	Y	<p>Agree with proposed changes if modified.</p> <p>Proposed Rule 7.1101 should allow for attorneys appointed to represent children in guardianships or other probate proceedings to meet the requirements by working for an agency with significant experience representing parties in guardianship proceedings. There should also be provisions allowing for the attorney to</p>	<p>The committee has revised rule 7.1101(b)(2) to permit an attorney who qualifies under court rules governing appointments of counsel for children in juvenile court dependency or Family Code custody actions to be appointed to</p>

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				<p>handle the cases if supervised by an attorney who meets the requirements. The family law requirements for appointment of counsel to represent children in cases have a similar provision. This rule is particularly important for individuals representing children in guardianship proceedings.</p> <p>Further section (e) requires training in estate planning and trusts. In practice, the attorneys who represent children in guardianship proceedings are often family law practitioners and do not handle complex estate planning, trust, or conservatorship proceedings. It might make sense to separate the requirements between guardianship of the person and other probate proceedings in light of this distinction.</p>	<p>represent children in guardianships.</p> <p>The committee believes that the three-hour requirement is not onerous, and could be in approved topics of interest in both guardianships and conservatorships.</p>
11.	Ms. Jamie Lamborn Retired Sacramento, California	N	N	<p>Do not agree with proposed changes</p> <p>From personal experience and my personal opinion, I have found the corruption goes all the way back to the Probate Referees. It was my experience the Probate Referees in Sacramento County “covered up” the Probate Attorney's intent to "steal" the conservatee's property by allowing this attorney to sell the property or trade the property before the appraisals were</p>	<p>The committee cannot respond to this comment because it appears directed at specific problems this commentator had in a conservatorship case in Sacramento. No comments are directed at the proposal.</p>

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				submitted. As a beneficiary of my parent's estate, I was legally entitled to view the supporting documents of these appraisals but I was refused access to do so by the Probate Referee himself. Education is not the problem. The greed of the individuals involved in our Probate system is the problem. We need to set limits for the charges and continually check and balance who is gaining ownership of the conservatee's property. The Probate Referees, the Probate Investigators and all involved with the Probate, including Attorneys and Judges, need to be carefully scrutinized by a disinterested party.	
12.	Ms. Cristina Llop Director, Access Superior Court of San Francisco County San Francisco, California	A	N	Agree with proposed changes. I'd just like to add that perhaps domestic violence education and elder abuse education should be required as part of the guardianship investigator and conservatorship, respectively.	Rule 10.478(b)(1) provides topical categories of initial training and, by reference, continuing education, that would include effect of domestic violence for guardianship court investigators and elder and dependent adult abuse, including financial abuse, for conservatorship court

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					investigators.
13.	Ms. Keeley C. Luhnnow Associate Attorney Albence & Associates La Jolla, California	A	N	I have no problems with additional education requirements; I just hope there will be cooperation by education providers. Right now there is a dearth of education on conservatorship related topics.	The advisory committee agrees there should be more conservatorship courses. The 2006 legislation and enactment of these rules should create a larger demand for these courses that will cause more of them to be offered.
14.	Ms. Mary Malk Probate/Mental Health Unit Manager Superior Court of Orange County Orange, California	AM	Y	Agree with proposed changes if modified. The Rules required by the Omnibus Conservatorship and Guardianship Reform Act of 2006 include proposed Minimum Qualifications (MQ) for Court Investigators and Probate Examiners. This court's Human Resources Department and the Probate and Mental Health Unit manager and supervisors have reviewed the proposed MQ's and believe the proposed rules are too restrictive, which may negatively impact our ability to fill vacancies in these classifications. <u>Recommendation</u> We suggest that the proposed requirement for a Bachelor's degree for both classes be a desirable qualification not a minimum qualification or	The qualifications for probate examiner have been revised include a paralegal certificate (no

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				<p>that courts have an option of allowing for "or a combination of education and experience that would demonstrate possession of the required knowledge and abilities".</p> <p>The proposed experience for Probate Examiner should be made a desirable qualification (not a minimum) and add an option that states "or a combination of education and experience that would demonstrate possession of the required knowledge and abilities."</p>	<p>longer probate-specific; any subject area of paralegal training is sufficient) or an Associate of Arts degree (two-year programs) plus a longer (four year) employment history as an alternative to the college degree and two-year employment history requirement. A third alternative—a JD degree and six-months' employment—has also been added. The committee believes these alternatives will enlarge the pool of qualified examiner candidates to meet the needs of the courts, while maintaining high qualification standards that the committee believes are necessary for these demanding positions. The committee believes that "desirable" but not mandatory minimum qualifications would be insufficient for a rule of court required by legislation that requires specification of the qualifications for court investigator positions.</p>

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				<p><u>Reasons for Recommendation</u> The Court Investigator qualification standard requires a Bachelor's degree with no alternative substitution of education and experience. This appears to be a potential or actual artificial barrier to employment since many potential candidates in the social services or law enforcement will have entered those fields without a Bachelor's degree. Generally we would consider 24 upper division units, in appropriate subject matter, to be a reasonable substitution for a B.A. It is difficult to defend the job relatedness of requiring a B.A. degree without a substitution option. The most practical way to meet the needs of all the courts is to make the proposed MQ's "desirable" rather than "minimum" qualifications. Another alternative is to add an option that says "or a combination of education and experience that would demonstrate possession of the required knowledge and abilities".</p> <p>The same analysis applies to the Probate Examiner requirement for a B.A. However, there are additional concerns with the experience requirements for Probate Examiner. Other than "court experience" it will be difficult to find candidates who can meet the experience requirements proposed. Probate law is a niche practice. There are not a large number of</p>	<p>The representatives of the California Association of Superior Court Investigators who participated in the rule-drafting process under the mandate of the legislation consider the Bachelor's Degree qualification to be particularly important for the investigator position. The advisory committee was advised that a clear majority of court investigators currently possess four-year college degrees.</p> <p>The committee has modified rule 10.777(c) to eliminate probate-specific private or public law office experience as a requirement for examiners. Experience in a public or private law office will</p>

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				<p>probate attorneys compared to other types of practice and there will not be many candidates with experience working for a probate attorney. We suggest that the proposed experience be made a desirable qualification not a minimum qualification or add an option that states "or a combination of education and experience that would demonstrate possession of the required knowledge and abilities".</p> <p>The above suggested changes to the proposed minimum qualifications will expand the labor pool from which the courts can draw qualified candidates. The additional flexibility we suggest will allow courts to operate more successfully within their local labor market and, particularly, at a time when there are labor shortages for knowledge workers.</p> <p>In addition, we would add that out of 79 applicants in our last recruitment, only 4 would have met the minimum requirements as defined in this proposed rule. We had no applicant with paralegal experience specific to probate, however we did have an applicant with a degree and a paralegal certificate, who had worked as a paralegal in the Dept. of Child Support Services for 7 years and who, having been trained on the job, is now performing very adequately as an examiner.</p>	<p>continue to qualify, but will not be limited to probate experience.</p> <p>Modification of the paralegal provision of rule 10.777(c)(2) to eliminate the requirement of probate-specific experience, and inclusion of the two-year Associate of Arts degree in this category should reduce the problems noted by this commentator.</p>

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				The rule should definitely allow other legal experience or education related to the skills and abilities required for the job. Staffs have also proven that applicants with education, such as a law degree, substituted for experience can make for excellent examiners.	The committee has revised rule 10.777(c) to permit a JD degree plus six months' employment experience as an alternative way to qualify for an examiner position.
15.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	A	Y	Agree with proposed changes. General Comments: 1. PFAC is pleased with and strongly supports the establishment of education requirements for Judicial Officers, Probate Department Court Staff, and Attorneys. 2. We hope that this does not reduce the pool of attorneys able to accept court appointments in conservatorships and guardianships.	No response necessary. 2. The advisory committee will monitor the availability of appointed counsel after enactment of this rule.
16.	Hon. Dennis E. Murray Presiding Judge of the Superior Court of Tehama County Red Bluff, California	N	N	Rule 7.1101(b) as proposed simply cannot work in small counties. The first question which arises is how any attorney would acquire the experience needed under the rules to be appointed. It would be	The advisory committee has proposed a modification of rule 7.1101 that would authorize small

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				<p>difficult in large counties to acquire the needed experience; in small counties, most attorneys in this area are appointed. Consequently, it creates a catch-22, in that attorneys cannot get the appointment until they are experienced and they cannot get the experience until they are appointed.</p> <p>Secondly, small counties are not going to have enough attorneys willing to meet all the requirements, including the continuing education requirements.</p> <p>Three hours a year may not seem unreasonable, but consider, for example, that between June 2005 and June 2006, Mono County had only five probate filings, based upon latest court statistics. There just is not enough work and, therefore, not enough interest by lawyers in small counties to seek out these appointments, and to meet the requirements set by these rules. Frankly, unless the rules are modified to provide the trial court with adequate appointment flexibility, the courts, by necessity, will simply ignore these rules.</p>	<p>courts (those with four or fewer authorized judges) to waive the qualifications (except the professional liability insurance or self-insurance requirements) for appointed counsel upon the making of certain findings.</p> <p>The committee has also proposed a modification of rule 7.1101(b) to permit attorneys qualified for appointments to represent children in juvenile dependency or Family Code custody proceedings to be appointed as counsel for children in guardianships. Moreover, Senate Bill 241 in the 2007 Legislature (Stats. 2007, ch. 553) clarifies that appointments of counsel for minors under Probate Code section 1470 are subject to the same allocation procedure for imposition of the cost of appointed counsel between the public sector and the ward's estate and the ward's parents as is in effect for appointments of counsel in conservatorships under Probate Code sections 1471–1472, and also clarifies that the public sector</p>

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				<p>Rule 10.468(c) creates educational requirements for judges. It applies only to judges who are “regularly assigned to hear probate proceedings.” “Regularly assigned,” as defined in rules 10.468(a)(5)(B), would include a judge responsible for hearing most of the probate proceedings filed in a court that does not have a dedicated probate department. That judge would then be required to participate in 18 hours of continuing education every three years. In a two-judge court, there is always going to be at least one judge who is</p>	<p>portion of the cost of appointed counsel in guardianships is to be borne by the county, not the court. These changes should make it easier to find qualified attorneys to represent minors in guardianships.</p> <p>The advisory committee believes that three hours a year in continuing education courses that qualify for MCLE for probate specialists is not onerous or difficult to complete. All attorneys, private counsel and deputy public defenders, have MCLE requirements. Virtually all probate-specific MCLE courses provide State Bar specialist credit.</p> <p>The advisory committee believes that every court should have at least one judicial officer participate in the probate education required under the rule. However, to address the problems disclosed by this comment, the committee has proposed modifications of rule 10.468 that would (1) reduce the continuing probate education requirement to 9 hours over three years and 3 hours per year for small</p>

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				going to hear most of the probate proceedings. In Sierra County, for example, the last statistics indicate they had three cases filed in 2005-2006. The judge who hears two of them, under this proposed rule, would need to attend the mandatory 18 hours. In a small court, where all the judges hear all types of cases, it simply is not cost effective or sensible to have mandatory subject-matter educational programs in other areas where that judge is hearing cases. I suggest appropriate language might be similar to that contained in Standards of Judicial Administration, Standard 10.12(c), which is applicable to dependency cases. It requires each judicial officer whose principal judicial assignment is to hear juvenile dependency matter or <i>who is the sole judicial officer hearing</i> these matters should attend the education recommended by the Standard.	courts, defined as those with 4 or fewer authorized judges; and (2) permit presiding judges of these courts to select the judicial officer who must complete the education required by the rule.
17.	Ms. Pamela J. Peery Family Law Facilitators Superior Court of Riverside County Riverside, California	A	N	Agree with proposed changes.	No response necessary.
18.	Ms. Kathleen U. Poling Attorney Poling & Poling Martinez, California	AM	N	Agree with proposed changes if modified. The continuing education requirements for court-appointed private attorneys in conservatorship and guardianship are classes that qualify for certification continuing	The requirement of continuing education in specialist-qualified classes was placed in the proposed rule in recognition of the fact that

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				education for probate, trust, estate certification. As far as I know, conservatorship subject matter is never covered in these classes, because conservatorships are not specifically part of the specialty. Therefore, I have yet to see a class that covers conservatorship issues (which is always what I am looking for when signing up for continuing legal education) that is eligible for the trust, estate, and probate certification.	there are few conservatorship-specific courses. We expect there will be more such courses. Even if not, many specialist-qualified courses would provide instruction on topics useful in conservatorship practice.
19.	Mr. Joseph Quattrochi, Jr. Fontana, California	N	N	Do not agree with proposed changes. It is my belief that SP07-09 as represented is a response to huge problem that has been unaddressed in the past and will continue to haunt the elderly community of this state in the future. You offer with SP07-09 an archaic approach to a subject that needs a twenty first century solution. I shall address the experiences that my family has personally realized that are the results of the lack of good laws and well educated court employees which includes judges. As a licensed real estate broker, I have had to comply with more education requirements than what SP07-09 is suggesting. I control no one's estate or real property, no one's person, nor do I have access to one's cash assets or material possessions. I do not have the ability to affect one's liberty. So why it is that the Judicial	These complaints appear to be directed to a specific conservatorship proceeding, unrelated to the proposed training, education, and qualifications of court staff and judicial officers.

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				<p>Council maintains the status-quo? The horrific attitude and enforcement of the laws in courts is extremely suspicious to me; so much so that I feel the good ole boys of the court perjure themselves and commit fraudulent acts of conspiracy against the conservatees. Your system has failed many conservatees and my family. The new educational requirements still fails my family and every elderly citizen of this state.</p> <p>Immediately include a member of the public on the panel so as to get valuable insight and personal experiences of how the system needs improving. Judges, conservators, lawyers and the supporting cast in your so called judicial system are committing questionable acts. So with the hope of creating a promising future I submit for your consideration the following:</p> <p>Judges in the new Probate arena should undergo two intensive years of specialized training and serve an apprenticeship. This to train and certify as to the expertise one has gained in the new laws and the implementation of same. To allow one to become more proficient in the electronic medium of transferring information this aspect is critical in decision making and verification. To become attentive in recognizing the exploitation of the elderly and the signs of such.</p>	<p>The advisory committee is not prepared to recommend an education program of the kind proposed here. This program would be longer than all other California judicial training programs combined, and there is no prospect of having apprentice judicial officers in probate matters or in any other field.</p>

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				<p>The judge must be taught basic medical theories so the Judge can effectively observe one’s state. The judge must have knowledge in the areas of Medicare, Medi-Cal and the fraud that can be realized within that system. He should become so learned that he never allows a conservator to make the ultimate decisions without verification. One’s care and process of care should fall upon the courts this to ward off fraud, mistakes and waste. The court must enforce the laws with sanctions.</p> <p>Where elderly persons have concerns of personal hygiene, protection from hazards, or abandonment the court needs to address these issues and replace them with responsible care and custody.</p> <p>Ex Parte hearings are a thing of the past; liberties are continually extinguished in most of these cases without legal representation. A judge today must painstakingly review each case and stay assigned to that case as simple logic would dictate. Conservatees’ estates must not be burdened with financing both sides of court room disputes, especially when considering actions of the past dubious attorneys. The probate mechanism must have a means to grant a recovery of monetary losses brought forth by those dubious attorneys.</p>	

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				<p>Accounting, must be submitted on time so as to properly administer to the estates under the courts scrutiny; no exception. How are you going to accomplish these goals? Through education.</p> <p>These cases of probate law are the most complex and most difficult to litigate. They require an increased level of experience and expertise and as time goes on they will become more complex. A feeble elderly person deserves better than to be embezzled or abused by anyone in the system.</p> <p>A basic universal language must be developed to guarantee justice to the conservatees being conserved. With regard to accounting maybe we need more frequent accounting, monthly, quarterly and annually; these accountings must be verified. The good ole boy way of presenting accounting should be done away with, no more rubber stamping the documents without investigation.</p> <p>The state bar in the past has favored its members by sponsoring so call educational seminars that include credits. The only problem is that the seminars were on the golf course.</p> <p>A judge no matter how gifted and sincere needs</p>	

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				<p>time to study mental health so one can make knowledgeable decisions concerning ones mental health.</p> <p>Any and all supporting court persons should have a minimum of qualified specialized education in the matters previously mentioned. And, it would be great if an apprentice program of such was adopted for all involved in the court business, because to date quite frankly your system does not work.</p> <p>Court bonding requirements should be increased to dollar for dollar of estate value especially in the category of material possessions these are most vulnerable to theft. I personally have knowledge against a certain conservator that a vehicle inventoried in one conservatees case disappeared. Go back to the drawing board and take a good look at the California Real Estate Licensing Education structure that is in effect now and working well. That is the education template that should be mirrored.</p> <p>On a final note do away with political appointees such as probate referees. They are costing the conservatees estates, underestimating an estate’s real property, and more importantly miss judging the value of</p>	

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				<p>material possessions. And if you think of it, it also costs the State of California dearly in lost revenues each and every year.</p> <p>Realize this, the system now is grossly mismanaged and the tracking of assets, go entirely unreported. I ask you do unscrupulous attorneys deserve to be able to manipulate the judicial system because they know its flaws. How does a judge combat this type of criminal behavior if he is not razor sharp mentally and well educated on the implementation of a persons rights according to law?</p> <p>If you want all of my personal findings and suggestions, I would be glad to divulge them to you. But because the system has failed me and family, because I have penalized with monetary expenses to date of over one hundred ten thousand dollars (\$110,000.00) you can pay me for my wisdom. The system took Helen Jones, the system allowed one conservator, and her attorney to fraudulently hold a conservative as hostage illegally. Helen Jones now has past into the next dimension what happens to her injustices and liberties that this system trammed upon. Forgotten?</p> <p>I demand more be done than what is suggested in SP07-09. Our elderly, this nation's National</p>	

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				Treasures, deserve a better ending to their existence here on earth.	
20.	Ms. Mary Joy Quinn Director, Probate Superior Court of California, County of San Francisco San Francisco, California	A	Y, N	Agree with proposed changes.	No response necessary.
21.	Mr. Michael Roddy Executive Officer of the Superior Court of California County of San Diego San Diego, California	A	Y	Agree with proposed changes.	No response necessary.
22.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	AM	Y	Agree with proposed changes if modified. The Executive Committee generally supports the proposed rules as submitted and makes one recommended clarification: at page 28, Rule 10.777 Qualifications of Court Investigators, Probate Attorneys, and Probate Examiners, subd. e., Exemption for Smaller Courts: "Courts with four or fewer judges" should be changed to read "counties with four or fewer Superior Court judges." Rationale for change: The exemption should be	Mr. Stern's interpretation of the rule was intended. The rule has been modified to extend the authority to waive qualifications of court staff to courts with 8 or fewer, not 4 or fewer judges. However, the judges are now referred to as <i>authorized</i> judges, clearly indicating all judges authorized for an entire court.

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				<p>based on the size of the judiciary in the county, not in any one court. If it is clear that “court” refers to the county throughout the rule, then the proposed change would not be necessary.</p> <p>Adopted by Executive Committee unanimous vote, June 16, 2007.</p>	
23.	Superior Court of Los Angeles County Los Angeles, California	A	Y	Agree with proposed changes.	No response necessary.
24.	Ms. Mary Beth Todd Court Executive Officer Superior Court of Calaveras County San Andreas, California	AM	Y	<p>Agree with proposed changes if modified.</p> <p>The qualifications for the Probate Examiner should be modified to allow the substitution of years of increasingly responsible experience working for a Superior Court for the education requirements. A non-related college degree has no bearing on whether or not an employee can perform these duties. These are specialized duties for which training in the trial court will be required. This also allows the court greater flexibility to develop employees that have demonstrated experience, responsibility and the ability to fill these specialized positions. A non-related bachelor's degree has no bearing on the position. Court employees who have the experience working in the court should not be denied the opportunity to pursue positions for which they are otherwise qualified.</p>	<p>See the response to the comments of Ms. Mary Malk, No. 14 above. The advisory committee believes that completion of the work necessary for a four-year college degree, a paralegal certificate, or an Associate of Arts two-year degree, demonstrate the necessary intellectual capacity, discipline, and other qualities appropriate for the proper performance of the duties of the examiner position.</p>

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25.	Ms. Michelle Uzeta Associate Managing Attorney Protection and Advocacy, Inc. Los Angeles, California	AM	Y	<p>Agree with proposed changes if modified.</p> <p>Our agency asks that education/training in the area of "disability competence" be added to the continuing education requirements for all of the officers and personnel subject to these proposed rules. This includes judicial officers, counsel appointed by the court, court investigators, probate examiners, and probate attorneys. Such an amendment would impact the following proposed rule sections: Rule 10.462(c)(1); Rule 7.1101(e) or (f); and Rule 10.478(b-d).</p> <p>Basic awareness and understanding of disability issues is necessary for court personnel and officers to perform their respective duties free from bias and stereotype.</p>	The advisory committee will pass this comment on to CJER for consideration for judicial education curricula design. The committee does not believe, however, that the rules should be amended to prescribe "disability competence."
26.	Ms. Robin C. Westmiller, J.D. President National Association to Stop Guardian Abuse Thousand Oaks, California	AM	Y	<p>Agree with proposed changes if modified. There is nothing in this proposal regarding what qualifications the people who will teach these classes must have! What agency will organize these classes, who will pay for them or what information will be included in the class.</p> <p>It only stipulates that they would have to complete "specified" education. But does not</p>	The rules enacted this year (January 1, 2007), into which the education rules discussed here will fit, contain provisions that govern the source of the training and education required in all judicial branch education rules.

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				<p>state exactly what that specified education will be.</p> <p>There is nothing stated as to courses for attorneys who wish to help the victims get out of conservatorships. It seems this education requirement is designed to keep the "wards" in the system with nothing to teach attorneys, judges, or any other party the means to get the victims freed.</p> <p>Can only those in the judicial branch take these classes, or can any concerned citizen? Where are the classes and requirements for the Guardians?</p> <p>What are the consequences if judges refuse to take the classes?</p> <p>Modifications: Include members of the public in your "interested parties" list to compile the courses necessary to comply with the rule.</p> <p>Make a firm stipulation that no one who does not comply with this rule will be allowed to participate in any probate conservatorship</p>	<p>Education for appointed counsel would include instruction on defense-related topics.</p> <p>Many courts have training programs for nonprofessional conservators, and more will begin these courses because of the 2006 legislation. That legislation also imposes substantial education requirements for professional conservators.</p> <p>Judicial officers must report their completion of required education to their presiding judges. The courts also must report to the Administrative Office of the Courts.</p> <p>There is no reason to provide this in the rule. Probate matters are a specialty assignment for judicial officers. There is no reason to believe that judicial officers</p>

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				proceedings.	assigned to those matters would not take advantage of all education opportunities relating to the assignment.
27.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	A	N	Agree with proposed changes.	No response necessary.

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