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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 29, 2010

Title

Probate Guardianship: Continuing Education
of Counsel Appointed to Represent Minors in
Guardianships of the Person

Agenda Item Type

Action Required

Effective Date

January 1, 2011

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Rules of Court, rule 7.1101

Date of Report

September 25, 2010

Recommended by

Probate and Mental Health Advisory
Committee
Hon. Mitchell L. Beckloff, Chair

Contact

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Executive Summary

The Probate and Mental Health Advisory Committee recommends amending rule 7.1101 of the California Rules of Court, which prescribes the qualifications of counsel eligible for appointment by the court to represent minors in probate guardianship proceedings, including required continuing education. The amendment would permit certain counsel eligible for appointment to represent minors in guardianships of the person to satisfy the continuing education requirements of rule 7.1101 by meeting the continuing education requirements of rules 5.242 or 5.660. These rules govern the qualifications of counsel eligible for appointment to represent minors in family law custody or juvenile dependency proceedings.

Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2011, amend rule 7.1101 of the California Rules of Court to permit counsel eligible for appointment as counsel for minors in probate guardianships of the person because they are qualified for appointment to represent minors in family law custody or juvenile dependency proceedings under rules 5.242 or 5.660, to satisfy the continuing education

requirements of rule 7.1101(f) by satisfying the continuing education requirements of either of those rules.

Previous Council Action

Rule 7.1101 was adopted by the Judicial Council effective January 1, 2008. The rule prescribes the qualifications of counsel eligible for appointment by the court to represent minors in guardianships under Probate Code section 1470 and conservatees and proposed conservatees in conservatorships under sections 1470 and 1471. The rule was adopted as a direct response to legislative direction under the Omnibus Conservatorship and Guardianship Reform Act of 2006.¹ The council amended rule 7.1101 in 2009, primarily to modify and clarify its application to small courts, defined in the rule as those with four or fewer authorized judges.²

Rationale for Recommendation

Rule 7.1101(f) requires three hours of continuing education each calendar year for each attorney eligible under the rule for appointment by the court to represent minors in guardianships or conservatees in conservatorships. The education must qualify for minimum continuing education credit for State Bar-certified specialists in estate planning, trust, and probate law. The primary purpose of this requirement is to ensure that attorneys appointed in conservatorships have at least some access to current training in probate procedure generally and fiduciary accounting specifically. The accounting education is also relevant in guardianships of the estates of wards. However, most guardianships are of the person only; the minors involved do not have estates that require management by an appointed guardian. No fiduciary accountings are prepared and filed in these cases.

Rule 7.1101(b)(1) prescribes two ways for attorneys to qualify for court appointments in guardianships. One alternative qualifies attorneys for such appointments if they are qualified for appointment to represent children in family law custody matters under rule 5.242 or minors in juvenile dependency proceedings under rule 5.660.³ Attorneys who qualify in this way must satisfy the continuing education requirements of both this rule and either the family law or juvenile dependency rule (rule 7.1101(b)(1)(C)).

After the rule went into effect, the advisory committee received information from court probate staff in Los Angeles County and a judge of the Superior Court of Santa Clara County that these

¹ Probate Code section 1456, added by Assembly Bill 1363 (Stats. 2006, ch. 493, § 3). See section 1456(a)(3).

² See rule 7.1101(e). The change permits these courts, without having to make express waivers based on inability to find qualified appointees or other ground of hardship, to appoint private counsel—attorneys other than public defenders—who do not satisfy the rule’s requirements for professional liability insurance if counsel demonstrate adequate self-insurance.

³ See rule 7.1101(b)(1)(B). The other way to qualify is to have actual experience representing minors in guardianships, family law custody matters, or juvenile dependency matters in the five years before the first date of availability for appointment by the court (rule 7.1101(b)(1)(A)).

courts were having difficulty recruiting counsel for appointments in guardianships from the roster of attorneys qualified for appointments in family law or juvenile dependency matters because of the probate-specific continuing education requirement of rule 7.1101(f). The committee concluded that the continuing education required by rule 5.242 or rule 5.660 is sufficient in person-only guardianships, where fiduciary accountings or other topics addressed in probate-specialist education courses are not involved.⁴

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment as part of the spring 2010 invitation to comment cycle. Nine individuals or organizations, including the supervising judge of the probate and mental health department of the Superior Court of Orange County and the Executive Committee of the Trusts and Estate Section of the California State Bar, submitted comments. All commentators agreed with the proposal and no commentators recommended modifications.⁵

Implementation Requirements, Costs, and Operational Impacts

This proposal will not impose additional costs on the courts and the AOC, other than the cost of implementing any change in the rules of court. The proposal should actually reduce the costs courts incur to recruit qualified counsel for appointments in guardianships of the person because the panels of qualified attorneys in family law or dependency matters will be more accessible for these appointments.

Relevant Strategic Plan Goals and Operational Plan Objectives

By providing greater access to counsel competent to represent children in guardianship cases, this proposal implicates Goal IV of the Judicial Council's current Strategic Plan: Quality of Justice and Service to the Public. See Goal IV, No. 5 of the strategic plan and Goal IV, Nos. 1b and 1f of the council's operational plan.

Attachments

1. Cal. Rules of Court, rule 7.1101, at pages 4–5
2. Chart of comments, at pages 6–8

⁴ Rule 5.242(d) requires counsel appointed for minor children in Family Code custody matters to complete eight hours of continuing education yearly in the subjects listed in rule 5.242(c). These topics include statutes, rules of court, and case law concerning child custody and visitation litigation; representation of a child; and special issues in representing children in custody disputes. Family Code provisions governing child custody apply to guardianship proceedings where the appointment of a guardian of the minor's person is involved. (See Prob. Code, § 1514(b); Fam. Code, §§ 3020–3048.)

The last sentence of rule 5.660(d)(3) requires counsel appointed to represent children in juvenile dependency proceedings to complete eight hours of continuing education related to such proceedings within every three-year period. Topics include, in addition to a summary of dependency statutory and case law, information on child development, child abuse and neglect, substance abuse, and domestic violence.

⁵ A chart providing the full text of the comments and the advisory committee's responses is attached at pages 6–8.

Rule 7.1101 of the California Rules of Court is amended, effective January 1, 2011, to read as follows:

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

3
4 (a) * * *

5
6 (b) **Qualifications of appointed counsel in private practice**

7
8 Except as provided in this rule, each counsel in private practice appointed by
9 the court on or after January 1, 2008, must be an active member of the State
10 Bar of California for at least three years immediately before the date of
11 appointment, with no discipline imposed within the 12 months immediately
12 preceding any date of availability for appointment after January 1, 2008; and

13
14 (1) *Appointments to represent minors in guardianships*

15
16 For an appointment to represent a minor in a guardianship:

17
18 (A) * * *

19
20 (B) At the time of appointment, must be qualified:

21
22 (i) For appointments to represent children in juvenile
23 dependency proceedings under rule 5.660 and the court's
24 local rules governing court-appointed juvenile court
25 dependency counsel; or

26
27 (ii) For appointments to represent children in custody
28 proceedings under the Family Code under rule 5.242,
29 including the alternative experience requirements of rule
30 5.242(g).

31
32 (C) Except as provided in (f)(2), counsel qualified for appointments in
33 guardianships under (B) must satisfy the continuing education
34 requirements of this rule in addition to the education or training
35 requirements of the rules mentioned in (B).

36
37 (2)–(3) * * *

1 (c)–(e) ***

2
3 (f) **Continuing education of appointed counsel**

4
5 (1) Except as provided in (2), beginning on January 1, 2008, counsel
6 appointed by the court must complete three hours of education each
7 calendar year that qualifies for Minimum Continuing Legal Education
8 credit for State Bar–certified specialists in estate planning, trust, and
9 probate law.

10
11 (2) Counsel qualified to represent minors in guardianships under (b)(1)(B)
12 and who are appointed to represent minors in guardianships of the
13 person only may satisfy the continuing education requirements of this
14 rule by satisfying the annual education and training required under rule
15 5.242(d) or the continuing education required under rule 5.660(d)(3).

16
17 (g)–(i) * * *

SPR10-40**Probate Guardianships: Continuing Education Requirements for Counsel Appointed for Minors in Guardianships of the Person**
(amend Cal. Rules of Court, rule 7.1101)

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

	Commentator	Position	Comment	Committee Response
1.	Executive Committee, Trusts and Estates Section, California State Bar by Barry T. Matulich, Law Offices of Barry T. Matulich Sacramento	A	No specific additional comment.	No response necessary.
2.	Hon. Mary Fingle Schulte Supervising Judge, Probate/MH Superior Court of Orange County	A	No specific additional comment.	No response necessary.
3.	Catherine Closson Vance Vance & Vance Attorneys at Law Fairfield	A	<p>Last Summer, I was one of the instructors for a Minor's Counsel Training Program sponsored by the Solano County Bar Association.</p> <p>I had to point out CRC 7.1101(f) to my colleagues because some (frankly, most) were not aware of this provision which made them ineligible to accept appointments in Probate Guardianships, notwithstanding any number of years of exceptional work as Minor's Counsel in other arenas.</p> <p>I started law school with the specific goal of representing minors and have now done so for approximately 300 minors in Family and Juvenile Dependency Court for the past 18 years. Until 2008, I was also able to accept Probate Guardianship appointments.</p> <p>I fully support this proposal to amend CRC 7.1101. The explanation in support of the proposal is precisely on point.</p>	No response necessary.

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			Ironically, I came across the invitation for proposals during an internet search for Minor's Counsel Training. It is hard enough to locate training opportunities each years for eight hours of continuing education without having to also locate another three hours in courses designed for probate specialists, which emphasize estate planning.	
4.	Orange County Bar Association by Lei Lei Wang Ekvall President, Newport Beach	A	No specific additional comment.	No response necessary.
5.	Superior Court of Los Angeles County	A	No specific additional comment.	No response necessary.
6.	Superior Court of Orange County by Mary Malk, Manager, Probate/Mental Health Department	A	No specific additional comment.	No response necessary.
7.	Superior Court of Sacramento County, by Robert Turner, ASO II, Finance Division	NI	No specific comment.	No response necessary.

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	Commentator	Position	Comment	Committee Response
8.	Superior Court of San Bernardino County by Debra Meyers Deputy Court Executive Officer/General Counsel	A	No specific comment.	No response necessary.
9.	Superior Court of San Diego County by Michael M. Roddy, Executive Officer	A	No specific additional comment.	No response necessary.