

Probate and Mental Health Advisory Committee
Annual Agenda¹—2018–2019
Approved by Rules and Projects Committee: October 19, 2018

I. COMMITTEE INFORMATION

Chair:	Hon. John H. Sugiyama, Judge, Superior Court of California, County of Contra Costa
Lead Staff:	Mr. Corby Sturges, Attorney, Center for Families, Children & the Courts
Committee’s Charge/Membership:	
<p>Rule 10.44 of the California Rules of Court states the charge of the Probate and Mental Health Advisory Committee (PMHAC), which is to make recommendations to the council for improving the administration of justice in proceedings involving decedents’ estates, trusts, conservatorships, guardianships, and other probate matters, as well as mental health and developmental disability issues.</p> <p>The committee is also charged with coordinating activities and work with the Family and Juvenile Law Advisory Committee in areas of common concern and interest.</p> <p>PMHAC currently has 17 voting members and 1 advisory member. The attached terms of service chart describes the composition of the committee.</p>	
Subcommittees/Working Groups²:	
<ol style="list-style-type: none"> 1. Legislation Subcommittee 2. Guardianship Process Working Group 3. Legal Capacity Working Group 4. Civil Mental Health Issues Subcommittee 	

¹ The annual agenda outlines the work a committee will focus on in the coming year and identifies areas of collaboration with other advisory bodies and the Judicial Council staff resources.

² California Rules of Court, rule 10.30(c) allows an advisory body to form subgroups, composed entirely of current members of the advisory body, to carry out the body’s duties, subject to available resources, with the approval of its oversight committee.

II. COMMITTEE PROJECTS

#	New or One-Time Projects ³	
1.	<i>Qualifications and training of counsel appointed in protective proceedings</i>	<i>Priority 1(a), 1(e)⁴</i>
<p><i>Project Summary⁵</i>: Recirculate proposal to amend rule 7.1101 and revise forms GC-010 and GC-011 to improve implementation of Probate Code section 1456’s requirements concerning qualifications and continuing education requirements for counsel appointed by the court in conservatorship, guardianship, and other protective proceedings.</p> <p><i>Status/Timeline</i>: Recirculate in winter 2019 cycle, with amendments and revisions anticipated to take effect September 1, 2019, or January 1, 2020.</p> <p><i>Fiscal Impact/Resources</i>: Committee staff, Joint Rules Subcommittee of Trial Court Presiding Judges and Court Executive Advisory Committees (TCPJAC/CEAC JRS)</p> <p><i>Internal/External Stakeholders</i>: Legal Services</p> <p><i>AC Collaboration</i>: None</p>		
2.	<i>Fee waiver process for guardianships and conservatorships</i>	<i>Priority 1(a), 1(e) [See footnote 4]</i>
<p><i>Project Summary</i>: Collaborate with the Civil and Small Claims Advisory Committee and the Family and Juvenile Law Advisory Committee to consider revising the civil fee waiver forms and associated rules of court to conform to the Supreme Court’s decision in <i>Jameson v. Desta</i> (2018) 5 Cal.5th 594 and to accommodate the statutory distinction between the <i>petitioner</i> in a guardianship or conservatorship proceeding and the fee waiver <i>applicant</i> introduced by Assembly Bill 2747 (Stats. 2014, ch. 913). Request public comment on whether to revoke the special fee waiver forms for use in guardianship and conservatorship proceedings to avoid duplication and confusion on the part of self-represented litigants.</p>		

³ All proposed projects for the year must be included on the Annual Agenda. If a project implements policy or is a program, identify it as *implementation* or a *program* in the project description and attach the Judicial Council authorization/assignment or prior approved Annual Agenda to this Annual Agenda.

⁴ For non-rules and forms projects, select priority level 1 (must be done) or 2 (should be done). For rules and forms proposals, select one of the following priority levels: 1(a) Urgently needed to conform to the law; 1(b) Urgently needed to respond to a recent change in the law; 1(c) Adoption or amendment of rules or forms by a specified date required by statute or council decision; 1(d) Provides significant cost savings and efficiencies, generates significant revenue, or avoids a significant loss of revenue; 1(e) Urgently needed to remedy a problem that is causing significant cost or inconvenience to the courts or the public; 1(f) Otherwise urgent and necessary, such as a proposal that would mitigate exposure to immediate or severe financial or legal risk; 2(a) Useful, but not necessary, to implement statutory changes; 2(b) Helpful in otherwise advancing Judicial Council goals and objectives.

⁵ A key objective is a strategic aim, purpose, or “end of action” to be achieved for the coming year.

#	New or One-Time Projects ³	
	<p>Status/Timeline: Revised forms and amended rules are anticipated to take effect no sooner than September 1, 2019.</p> <p>Fiscal Impact/Resources: Committee staff, TCPJAC/CEAC JRS</p> <p>Internal/External Stakeholders: Legal Services</p> <p>AC Collaboration: Civil and Small Claims Advisory Committee and staff; Family and Juvenile Law Advisory Committee and staff</p>	
3.	Rules on reimbursement of graduated filing fees	Priority 1(a) [See footnote 4]
4.	Probate guardianship information for petitioners and parents	Priority 1(e) [See footnote 4]
	<p>Project Summary: Examine rules 7.151 and 7.550(b)(10) of the California Rules of Court, which apply to graduated filing fees for petitions in decedents' estates cases, to determine whether they should be repealed. The underlying graduated filing fees were held unconstitutional in <i>Estate of Claeysens</i> (2008) 161 Cal.App.4th 465, and the Judicial Council repealed rules 7.552 and 7.553, which also addressed those fees, effective January 1, 2015.</p> <p>Status/Timeline: Repeal, if recommended, could take effect as soon as July 1, 2019.</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Legal Services</p> <p>AC Collaboration: None</p> <p>Project Summary: Revise and update form GC-205, the probate <i>Guardianship Pamphlet</i> for petitioners, form GC-505, <i>Forms You Need to Ask the Court to Appoint a Guardian of the Person</i>, and form GC-510, <i>What is Proof of Service in a Guardianship?</i> to reflect current law and increase accessibility for self-represented petitioners; develop an information form for parents of children who are subject to guardianship petitions; revise guardianship petitions and accompanying forms to ensure that all persons entitled to personal service receive proper notice of the proceedings and an opportunity to be heard.</p>	

#	New or One-Time Projects³	
	<p>Status/Timeline: New form and revisions to related forms anticipated to take effect September 1, 2019, or January 1, 2020</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Superior Court Self-Help Centers</p> <p>AC Collaboration: None</p>	
5.	<p>Information about home ownership by a conservatee or ward to support a petition to waive an accounting</p>	<p>Priority 2(b) [See footnote 4]</p>
	<p>Project Summary: Develop a rule of court to (1) require a declaration in support of a petition under Probate Code section 2628 for waiver of an accounting in a guardianship or conservatorship to disclose whether the ward or conservatee owns a home and, if so, (2) require the declarant to attach documents showing current payments of the mortgage or other loan guaranteed by the home, all property taxes, and home insurance premiums. In the alternative, consider proposing an amendment to section 2628 to require the declaration supporting the petition to include that documentation. If this requirement is adopted, it will save the homes of many conservatees from being lost through foreclosure, tax sale, or an uncompensated fire loss.</p> <p>Status/Timeline: Rule anticipated to take effect January 1, 2020.</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Committee staff, RUPRO Committee and staff</p> <p>AC Collaboration: None</p>	
6.	<p>Simplified guardianship accountings when all funds are in blocked account</p>	<p>Priority 2(b) [See footnote 4]</p>
	<p>Project Summary: Consider amending rules of court or developing new Judicial Council forms for simplified guardianship accounting in proceedings in which all estate funds are held in a blocked account.</p> <p>Status/Timeline: On hold pending time and resources, development of guardianship process workplan</p>	

#	New or One-Time Projects ³	
	<p>Fiscal Impact/Resources: Committee staff, PMHAC Guardianship Process Working Group, TCPJAC/CEAC JRS</p> <p>Internal/External Stakeholders:</p> <p>AC Collaboration: None</p>	
7.	Costs of funeral as expense of administering decedent's estate	Priority 2 [See footnote 4]
8.	Judicial Council forms for court approval of minor's compromise	Priority 2(b) [See footnote 4]
	<p>Project Summary: Consider developing proposal for legislation to authorize the treatment of the costs of a decedent's funeral as expenses of administering the decedent's estate and therefore payable without submitting a creditor's claim against the estate.</p> <p>Status/Timeline: On hold pending time and resources.</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Governmental Affairs, Legal Services</p> <p>AC Collaboration: None</p>	
	<p>Project Summary: Revise and renumber the Judicial Council forms adopted for use in proceedings to approve compromise of a claim on behalf of a minor or person with a disability or withdrawal of funds from a blocked account.</p> <p>Status/Timeline: Revised and renumbered forms anticipated to take effect January 1, 2020</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Legal Services</p> <p>AC Collaboration: Civil and Small Claims Advisory Committee</p>	

#	Ongoing Projects and Activities	
1.	<i>Review and recommend restructuring of probate guardianship process</i>	<i>Priority 1, 1(e)</i> [See footnote 4]
<p><i>Project Summary:</i> The Guardianship Process Working Group will develop a workplan and timeline for its ongoing review of the judicial process for appointment of a guardian to promote due process and access to the courts. The workplan will include provision for:</p> <ul style="list-style-type: none"> (a) identifying elements of the process that need to be simplified, brought up to date, or restructured; (b) determining whether statutory amendments are needed and, if so, developing a proposal for legislation; (c) identifying necessary or appropriate amendments to the California Rules of Court that govern guardianship proceedings and developing those amendments; (d) identifying necessary or appropriate revisions to Judicial Council forms adopted or approved for use in probate guardianship proceedings and developing those revisions, including one-time projects ; (e) identifying any new rules or forms needed to clarify the process or bring it into conformity with current law. <p><i>Status/Timeline:</i> Ongoing.</p> <p><i>Fiscal Impact/Resources:</i> Committee staff, Governmental Affairs staff</p> <p><i>Internal/External Stakeholders:</i> Superior Court Self-Help Centers, translation services</p> <p><i>AC Collaboration:</i> PMHAC Guardianship Process Working Group; Family and Juvenile Law Advisory Committee</p>		
2.	<i>Study the relationship of clinical evaluations of mental and physical abilities and judicial determinations of legal capacity and need for assistance, including appointment of a conservator; develop recommendations for updated legal standards</i>	<i>Priority 1(e), 2</i> [See footnote 4]
<p><i>Project Summary:</i> The Legal Capacity Working Group will study the relationship between clinical evaluations of a person’s mental and physical abilities and judicial determinations of the person’s legal capacity or need for assistance, including appointment of a conservator; solicit input from clinicians and lawyers to identify areas of misalignment between the relevant clinical and legal standards; develop recommendations to improve the alignment of clinical evaluations of ability to judicial determinations of legal capacity, including potential legislation, rules of court, and Judicial Council forms, including possible revisions of <i>Capacity Declaration—Conservatorship</i> (form GC-335) and <i>Dementia Attachment to Capacity Declaration—Conservatorship</i> (form GC-335A). Consider providing expressly for the confidentiality of capacity declarations filed in judicial proceedings.</p>		

#	Ongoing Projects and Activities	
	<p>Status/Timeline: Ongoing. Initial form revisions could take effect September 1, 2020, or January 1, 2021.</p> <p>Fiscal Impact/Resources: Committee staff; PMHAC Legal Capacity Working Group</p> <p>Internal/External Stakeholders: Legal Services; Psychiatrists and clinical psychologists</p> <p>AC Collaboration: Collaborative Justice Courts Advisory Committee</p>	
3.	Support judicial branch efforts to improve access to mental health proceedings	Priority 1 [See footnote 4]
	<p>Project Summary: Cooperate with Judicial Council staff and other advisory committees in developing and implementing recommendations to improve access and procedures in mental health proceedings, including recommendations 24–27 of the Mental Health Issues Implementation Task Force.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff, staff to other advisory committees</p> <p>Internal/External Stakeholders: Governmental Affairs, Legislature</p> <p>AC Collaboration: Collaborative Justice Courts Advisory Committee, Criminal Law Advisory Committee, Family and Juvenile Law Advisory Committee</p>	
4.	Review suggestions	Priority 1 [See footnote 4]
	<p>Project Summary: As mandated by rule 10.21(c), review suggestions from members of the judicial branch and the public for improving judicial administration, practice, and procedure in decedents’ estate, trust, guardianship, conservatorship, and other proceedings under the Probate Code and recommend action by the council or one of its committees.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff</p>	

#	Ongoing Projects and Activities	
	<p>Internal/External Stakeholders: As appropriate based on proposal received</p> <p>AC Collaboration: As appropriate based on proposal received</p>	
5.	Review pending legislation	Priority 1 [See footnote 4]
	<p>Project Summary: Review pending legislation affecting probate court administration, practice, or procedure in proceedings under the Probate Code and the Lanterman-Petris-Short Act, and make recommendations to the council’s Policy Coordination and Liaison Committee, as required by rule 10.34(a)(3).</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff, Governmental affairs staff</p> <p>Internal/External Stakeholders: As appropriate based on subject of legislation</p> <p>AC Collaboration: Collaborative Justice Courts Advisory Committee and others as appropriate based on subject of legislation</p>	
6.	Review enacted legislation	Priority 1 [See footnote 4]
	<p>Project Summary: Review all enacted legislation referred to the committee by the Judicial Council’s Governmental Affairs staff that may affect issues within the advisory committee’s purview and, where appropriate, propose to the council rules and forms to implement the legislation or to bring rules and forms into conformity with it. This year, bills that may need implementation through rules and forms include AB 1290 (lawyer-client privilege), SB 909 (trusts), AB 2426 (trusts), AB 3248 (judiciary), and the bills discussed in item 7, below.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff, Governmental affairs staff</p> <p>Internal/External Stakeholders: As appropriate based on subject of legislation</p>	

#	Ongoing Projects and Activities	
	<i>AC Collaboration:</i> As appropriate based on subject of legislation	
7.	Monitor Developments in California Guardianship Law Related to Immigrant Children	Priority 1 [See footnote 4]
	<p>Project Summary: Monitor the implementation, in probate guardianship proceedings, of the directives in section 155 of the Code of Civil Procedure (added by Stats. 2014, ch. 685, § 1), section 1510.1 of the Probate Code (added by Stats. 2015, ch. 694), and other provisions concerning judicial findings to support (proposed) wards’ petitions for Special Immigrant Juvenile (SIJ) status in federal immigration proceedings. Statutes that may require implementation in 2019 include AB 2090, which amended Probate Code section 1510.1 to authorize a parent to petition for appointment of a guardian for an adult child; AB 2185, which added section 372.5 to the Code of Civil Procedure to authorize a guardian ad litem to appear under a pseudonym in specified circumstances; and AB 2642, which added section 2104.1 to the Probate Code to authorize appointment of an out-of-state nonprofit corporation as guardian of a child “in connection with a petition regarding special immigrant juvenile status.”</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Legal Services</p> <p>AC Collaboration: Civil Mental Health Issues Subcommittee; Family and Juvenile Law Advisory Committee</p>	
8.	Support rules modernization	Priority 2(b) [See footnote 4]
	<p>Project Summary: Support and assist the Information Technology Advisory Committee (ITAC) in its efforts to review and modernize rules of court so that they will be consistent with and foster modern e-business practices.</p> <p>Status/Timeline: Ongoing</p> <p>Fiscal Impact/Resources: Committee staff</p> <p>Internal/External Stakeholders: Legal Services</p>	

#	Ongoing Projects and Activities	
	<i>AC Collaboration:</i> ITAC	
9.	<i>Provide subject-matter expertise</i>	<i>Priority 2(b)</i> <i>See footnote 4</i>
	<p><i>Project Summary:</i> Serve as subject-matter resource for other advisory groups to avoid duplication of efforts and contribute to the development of recommendations for council action. These efforts may include providing probate and mental health procedural expertise and review to working groups, advisory committees, subcommittees, and Judicial Council staff, as needed.</p> <p><i>Status/Timeline:</i> Ongoing</p> <p><i>Fiscal Impact/Resources:</i> Committee staff</p> <p><i>Internal/External Stakeholders:</i> As appropriate based on inquiry</p> <p><i>AC Collaboration:</i> As appropriate based on inquiry</p>	

III. LIST OF 2017–2018 PROJECT ACCOMPLISHMENTS

#	Project Highlights and Achievements
1.	Recommended Judicial Council approval of two optional forms to request and appoint counsel probate guardianship and conservatorship proceedings
2.	Recommended Judicial Council approval of six optional forms to facilitate interstate transfer of conservatorship proceedings under the California Conservatorship Jurisdiction Act (CCJA)
3.	Recommended Judicial Council adoption of revisions to eight forms to implement Senate Bill 413 (Stats. 2017, ch. 122), which incorporated the term “major neurocognitive disorder” into the law
4.	Reviewed and provided technical assistance on more than 30 bills introduced in 2018 that affect or would have affected proceedings under the Probate Code
5.	Recommended the amendment of rule 10.44(c) of the California Rules of Court to add a category for a public interest lawyer to the committee’s membership
6.	Participated on ITAC Joint ad hoc Subcommittee on Remote Access to develop rules of court to govern remote access to court records by parties, attorneys, and justice partners