

### Invitation to Comment

Title	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 rules 10.462, 10.464, and 10.471 of the California Rules of Court; renumber rules 10.463, 10.464, and 10.471; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777, effective January 1, 2008).
Summary	The proposed new and amended rules of court would establish (1) education requirements for judicial officers regularly assigned to hear probate matters; (2) qualifications and education requirements for probate court investigators, probate examiners, and probate staff attorneys; and (3) qualifications and education requirements for private attorneys and public defenders appointed by the court in probate conservatorship and guardianship proceedings.
Source	Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair
Staff	Douglas C. Miller, Attorney Committee Counsel Office of the General Counsel, Administrative Office of the Courts (415) 865-7535 douglas.miller@jud.ca.gov
Discussion	In response to the mandate of the Omnibus Conservatorship and Guardianship Reform Act of 2006, <sup>1</sup> the Probate and Mental Health Advisory Committee is proposing a comprehensive set of rules of court that would (1) require judicial officers regularly assigned to hear probate matters to complete specified education when they begin the assignment and continuing education thereafter; (2) establish the minimum qualifications necessary for court investigators, probate examiners, and probate department attorneys; (3) require court investigators, probate examiners, and probate attorneys to complete initial and continuing education; and (4) establish minimum qualifications and continuing education requirements for attorneys,

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<sup>1</sup> Stats 2006, chapters 490–493 (respectively, SB 1116, SB 1550, SB 1716, and AB 1363), referred to collectively as the Omnibus Act. The mandate for the rules in this proposal is contained in new Probate Code section 1456, added by section 3 of chapter 493 (AB 1363).

public and private, appointed by the court to represent wards in probate guardianships or conservatees in probate conservatorships.

New Probate Code section 1456 provides as follows:

“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.”

The advisory committee created a working group consisting of the

members of its Elder Law and Incapacity Subcommittee and representatives of the organizations identified in section 1456(b). The working group, including representatives of all of those organizations, developed initial recommendations for the proposed rules. The recommendations were drafted as proposed rules by advisory committee staff, revised as necessary and approved by the working group, and submitted to, modified, and approved by the entire advisory committee. The rule drafts were also reviewed and commented on by the education subcommittee of the Chief Justice's Probate Conservatorship Task Force.

*Judicial officer and probate court staff education*

Proposed new rules 10.468 and 10.478 would prescribe the education requirements for, respectively, judicial officers and probate court staff investigators, examiners, and attorneys. These rules would be integrated with the judicial officer and court staff education rules adopted by the Judicial Council in 2006, effective January 1, 2007.<sup>2</sup>

Judicial officers subject to the requirements of new rule 10.468 would be judges and subordinate judicial officers, as defined in existing rule 10.701(a). Judicial officers regularly assigned to hear probate proceedings,<sup>3</sup> would be required to complete six hours of training on probate guardianships and conservatorships, including instruction on court-supervised fiduciary accounting, within six months of beginning a probate assignment. In addition, a judicial officer new to the bench would be required to complete the existing program for new judge orientation and the Judicial College. (Rule 10.468(b).)

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<sup>2</sup> The 2007 education provisions, consisting of rules 10.461–10.471, are in a new Chapter 8, *Minimum Education Requirements and Expectations*, in Title 10 of the California Rules of Court. This proposal would renumber rules 10.463 and 10.464, concerning, respectively, trial court executive officers and trial court managers, supervisors, and personnel, as rules 10.473 and 10.474. This change would permit all judicial officer education rules to be kept together in rules numbered 10.461–10.470 and all court staff education rules to be placed together in rules numbered 10.471–10.480. Current rule 10.471, concerning approved education providers and criteria for judicial branch education applicable to all court personnel, would be amended by this proposal and would also be renumbered as rule 10.481.

<sup>3</sup> Judicial officers regularly assigned to hear probate proceedings are defined in rule 10.468(a)(5) as those assigned to a dedicated full-time probate department; those responsible for hearing most of the probate proceedings in a court without a dedicated probate department; and those who hear probate proceedings regularly in locations remote from the central district or central courthouse, even though they may also hear other types of matters.

These judicial officers would also be required to complete 18 hours of continuing education every three years and a minimum of 6 hours per year, on probate guardianships and conservatorships and fiduciary accounting (rule 10.468(c)).<sup>4</sup> The initial (“content-based”) and continuing (“hours-based”) education could be provided by the Administrative Office of the Courts’ Education Division, by the organizations listed in proposed amended rule 10.481(a) (existing rule 10.471(a)) or by any other provider approved by the presiding judge of the court as meeting the criteria of amended rule 10.481(b).

Rule 10.478 would prescribe initial and continuing education for court investigators, probate department staff attorneys, and probate examiners as follows:

Court investigators:

1. Initial education: 18 hours of education within a year of start date, on the six general topics listed in rule 10.478(b)(1)<sup>5</sup>; and
2. Continuing education: 12 hours of education yearly on any of the general topics listed in rule 10.478(b)(1).

Probate staff attorneys:

1. Initial education: 18 hours of education within six months of start date in probate-related subjects, including guardianships, conservatorships, and court-appointed fiduciary accounting; and
2. Continuing education: 12 hours of education per year in probate-related subjects, including six hours in guardianships,

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<sup>4</sup> Rule 10.468(c)(2) would authorize an initial two-year period of continuing education for judicial officers currently assigned to hear probate matters. This provision would coordinate the continuing education under this rule with the first three-year period of general continuing education required or expected of all judicial officers under existing rule 10.462(c).

<sup>5</sup> The general topics are: (1) court process and legal proceedings in conservatorships and guardianships; (2) for guardianship investigators, child abuse and neglect and effect of violence on children and for conservatorship investigators, elder and dependent adult abuse, including financial abuse; (3) medical issues in guardianships and conservatorships; (4) use of criminal-record information, confidentiality, ethics, and conflicts of interest; (5) accessing community resources for children and elderly or developmentally disabled adults; and (6) interviewing children and persons with mental function or communication deficits.

conservatorships, and court-appointed fiduciary accounting.

Probate examiners:

1. Initial education: 30 hours of education within one year of start date in probate-related topics, including 18 hours in guardianships, conservatorships, and court-appointed fiduciary accounting; and
2. Continuing education: 12 hours yearly in probate-related topics, including six hours per year in guardianships, conservatorships, and court-appointed fiduciary accounting.

The authorized education providers for all three of these court staff positions are the same organizations authorized for judicial officers under proposed amended rule 10.481 (existing rule 10.471) except that additional authorized providers must be approved by the staff person's supervisor rather than by the presiding judge.

*Qualifications of court investigators, probate staff attorneys, and probate examiners*

Rule 10.777 would establish employment qualifications for persons starting employment or a contract with the court as court investigators, probate attorneys, and probate examiners on or after January 1, 2008 (rule 10.777(a)). The proposed qualifications for court investigators, probate attorneys, and probate examiners are as follows:<sup>6</sup>

Court investigators:

1. A Bachelor of Arts or Sciences degree in a social science, behavioral science, liberal arts, or nursing from an accredited institution; and
2. A minimum of two years' employment experience performing casework or investigations in a legal, financial, law enforcement, or social services setting.

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<sup>6</sup> Proposed rule 10.776 contains definitions of terms used in rule 10.777. All of the substantive provisions are in the latter rule.

## Probate attorneys:

1. Active membership in the State Bar of California for a minimum of five years; and
2. A minimum of two years' experience, pre- or post-bar admission, in one or a combination of the following positions:
  - a. Court-employed staff attorney;
  - b. Intern, court probate department (minimum six months);
  - c. Court-employed probate examiner, or court-employed or court-contracted court investigator;
  - d. Attorney in a probate-related public or private legal practice;
  - e. Deputy public guardian or conservator;
  - f. Child protective services or adult protective services worker, or juvenile probation officer; or
  - g. Private professional fiduciary appointed by a court, or employee of a private professional fiduciary or bank or trust company with significant fiduciary responsibilities, including responsibility for court accountings.

## Probate examiners:

1. A Bachelor of Arts or Sciences degree from an accredited educational institution; and
2. A minimum of two years' employment experience with a court, a public or private law office in a probate-related capacity, or with a public guardian or a private professional fiduciary; or
3. A paralegal certificate from an accredited educational institution and a minimum of four years of the employment experience described above.

All stated qualifications are minimums; courts would be authorized to establish higher qualifications and require employment or contracting candidates to comply with their customary hiring or personal-service contracting practices.

A court with four or fewer judges would be authorized to waive the qualifications required by this rule for its court probate staff positions if it could not find qualified candidates or for other grounds of hardship. (See proposed rule 10.777(e).) Comments are requested concerning whether authority to waive the qualification requirements of this rule should be extended to other courts, and if so, how should eligibility for this authority be defined.

*Qualifications and continuing education of court-appointed attorneys in conservatorships and guardianships*

Proposed rule 7.1101 would prescribe the qualifications and continuing education required of private and public counsel (deputy public defenders) appointed by the court to represent conservatees and proposed conservatees in conservatorships and minors in guardianships under Probate Code sections 1470 and 1471.

The proposed qualifications for private attorneys appointed under sections 1470 and 1471 on or after January 1, 2008 are as follows:

1. Active membership in the State Bar for at least 3 years immediately prior to the date of appointment, with no disciplinary proceedings pending and no discipline imposed within the 12 months preceding the date of first availability for appointment after January 1, 2008; and
2. Within 5 years of the date of first availability for appointment after January 1, 2008, the attorney must have:
  - a. Represented at least three conservatees or proposed conservatees in either probate or Lanterman-Petris-Short Act (LPS) mental health conservatorships or three minors in probate guardianships; or
  - b. Completed any 3 of the following tasks:
    - (1) Represented petitioners for the appointment of a probate conservator at commencement of three probate conservatorship proceedings, through the hearing and issuance of Letters of Conservatorship;
    - (2) Represented a petitioner, a conservatee or proposed conservatee, or an interested third party in two

contested probate or LPS conservatorship matters;<sup>7</sup>

- (3) Represented a conservatee or proposed conservatee, a minor, or another party for whom the court could appoint legal counsel in three matters described in Probate Code sections 1470, 1471, 1954, 2356.5, 2357, 2620.2, 3140, or 3205;
- (4) Represented fiduciaries in three separate cases for settlement of a court-filed account and report, through filing, hearing, and settlement, in any combination of probate conservatorships or guardianships, decedents' estates, or trust proceedings; or
- (5) Prepared five wills or trusts, five durable powers of attorney for health care, and five durable powers of attorney for asset management; and

3. Coverage by professional liability insurance satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year.

The proposed qualifications for a deputy public defender with actual responsibility for the performance of legal services on the appointment of a public defender under sections 1470 and 1471 are:

1. Active membership in the State Bar for at least three years immediately prior to the date of appointment; and
2. Satisfaction of the experience requirements for private attorneys listed above or a minimum of three years' experience representing minors in juvenile dependency or delinquency proceedings or patients in post-certification judicial proceedings or conservatorships under the LPS Act; and
3. Coverage by a professional liability insurance policy satisfactory to the court in the amount of at least \$100,000 per claim and \$300,000 per year or coverage for professional liability at an equivalent level by a self-insurance program for

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<sup>7</sup> A matter that qualifies under both (1) and (2) may be counted in both categories.

professional employees of his or her county.

Rule 7.1101 would not authorize prospective appointed counsel in private practice to demonstrate their capacity for self insurance. Comments are requested on whether prospective counsel should be able to demonstrate this capacity and courts should have authority to accept self-insurance in lieu of policy coverage.

Counsel would be required to complete three hours of continuing education per year that qualifies for mandatory continuing legal education credit for State Bar-certified specialists in estate planning, trust, and probate law.

Proposed rule 7.1101(d) contains transitional provisions governing the performance of legal services after January 1, 2008 by counsel appointed before that date. Under rule 7.1101(g), counsel would be required to certify before March 1, 2008 that they meet the qualifications of the rule in order to be eligible for additional appointments after that date. Beginning in 2009, they would also be required to certify that they have completed the required continuing education during the previous year.

The text of the proposed rules is attached beginning at page 10.

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Attachment

## Rule Proposal

Rules 10.462, 10.464, and 10.471 of the California Rules of Court would be amended; rules 10.463, 10.464, and 10.471 would be renumbered; and rules 7.1101, 10.468, 10.478, 10.776, and 10.777 would be adopted effective January 1, 2008, to read:

### Title 7.

#### Probate Rules

#### Chapter 23. Court-Appointed Counsel in Probate Proceedings

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

##### (a) Definitions

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

- (1) “Appointed counsel” or “counsel appointed by the court” are legal counsel appointed by the court under Probate Code sections 1470 or 1471, including counsel in private practice and deputy public defenders actually responsible for the performance of legal services under orders appointing a county’s public defender.
- (2) A “probate guardianship” or “probate conservatorship” is a guardianship or conservatorship proceeding under Division 4 of the Probate Code.
- (3) “LPS” and “LPS Act” refer to the Lanterman-Petris Short Act, Welfare and Institutions Code section 5000 et seq.
- (4) An “LPS conservatorship” is a conservatorship proceeding for a gravely disabled person under Chapter 3 of the LPS Act, Welfare and Institutions Code sections 5350–5371.
- (5) A “contested matter” in a probate or LPS conservatorship proceeding is a matter that requires a noticed hearing and in which written objections were filed by any party, or made by the conservatee or proposed conservatee orally in open court.
- (6) “AOC” is the Administrative Office of the Courts.

1 **(b) Qualifications of appointed counsel in private practice**

2  
3 Except as provided in this rule, each counsel in private practice appointed by  
4 the court on or after January 1, 2008, must:  
5

6 (1) Be an active member of the State Bar of California for at least three  
7 years immediately before the date of appointment, with no disciplinary  
8 proceedings pending and no discipline imposed within the 12 months  
9 immediately preceding the date of first availability for appointment  
10 after January 1, 2008;

11 and

12  
13  
14 (2) Within the five years immediately before the date of first availability  
15 for appointment after January 1, 2008, must have:  
16

17 (A) Represented at least three conservatees or proposed conservatees,  
18 in either probate or LPS conservatorships, or at least three wards  
19 or proposed wards in probate guardianships;  
20

21 or

22  
23 (B) Completed any three of the following five tasks:  
24

25 (i) Represented petitioners for the appointment of a conservator  
26 at commencement of three probate conservatorship  
27 proceedings, from initial contact with the petitioner through  
28 the hearing and issuance of Letters of Conservatorship;  
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30 (ii) Represented a petitioner, a conservatee or proposed  
31 conservatee, or an interested third party in two contested  
32 probate or LPS conservatorship matters. A contested matter  
33 that qualifies under this item and also qualifies under (i)  
34 may be applied towards satisfaction of both items;  
35

36 (iii) Represented a conservatee or proposed conservatee, ward or  
37 proposed ward, or another party for whom the court could  
38 appoint legal counsel in a total of three matters described in  
39 Probate Code sections 1470, 1471, 1954, 2356.5, 2357,  
40 2620.2, 3140, or 3205;  
41

42 (iv) Represented fiduciaries in three separate cases for settlement  
43 of a court-filed account and report, through filing, hearing,

1 and settlement, in any combination of probate  
2 conservatorships or guardianships, decedent's estates, or  
3 trust proceedings under Division 9 of the Probate Code; or  
4

5 (v) Prepared five wills or trusts, five durable powers of attorney  
6 for health care, and five durable powers of attorney for asset  
7 management;  
8

9 and

10  
11 (3) Be covered by professional liability insurance satisfactory to the court  
12 in the amount of at least \$100,000 per claim and \$300,000 per year.  
13

14 **(c) Qualifications of deputy public defenders performing legal services on**  
15 **court appointments of the public defender**  
16

17 (1) Except as provided in this rule, beginning on January 1, 2008, each  
18 county deputy public defender with actual responsibility for the  
19 performance of legal services in a particular case on the appointment of  
20 the county public defender under Probate Code sections 1470 or 1471  
21 must:  
22

23 (A) Be an active member of the State Bar of California for at least  
24 three years immediately before the date of appointment;  
25

26 and

27 (B) Satisfy the experience requirements for private counsel in (b)(2);  
28  
29

30 or

31 (C) Have a minimum of three years' experience representing minors  
32 in juvenile dependency or delinquency proceedings or patients in  
33 post-certification judicial proceedings or conservatorships under  
34 the LPS Act;  
35  
36

37 and

38 (D) Be covered by professional liability insurance satisfactory to the  
39 court in the amount of at least \$100,000 per claim and \$300,000  
40 per year, or be covered for professional liability at an equivalent  
41 level by a self-insurance program for the professional employees  
42 of his or her county.  
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(2) A deputy public defender who is not qualified under this rule may periodically substitute for a qualified deputy with actual responsibility for the performance of legal services in a particular case. In that event, the county public defender or his or her designee, who may be the qualified supervisor, must certify to the court that the substitute deputy is working under the direct supervision of a deputy public defender who is qualified under this rule.

**(d) Transitional provisions on qualifications**

(1) Counsel appointed before January 1, 2008 may continue to represent their clients through February 2008, whether or not they are qualified under (b) or (c). After February 2008 through conclusion of the matters for which appointments under this paragraph were made, the court may retain or replace appointed counsel who are not qualified under (b) or (c), or may appoint qualified co-counsel to assist them.

(2) In January and February of 2008, the court may appoint counsel who have not filed the certification of qualifications required under (g) at the time of appointment, but must replace counsel appointed under this paragraph who have not filed the certificate before March 1, 2008.

**(e) 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.

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

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

1 **(g) Certification of qualifications and continuing education**  
2

3 (1) Each counsel appointed or eligible for appointment by the court before  
4 January 1, 2008, must certify to the court before March 1, 2008, that he  
5 or she satisfies the qualifications under (b) or (c) to be eligible for a  
6 new appointment on or after that date.

7  
8 (2) After February 2008, each counsel must certify to the court that he or  
9 she is qualified under (b) or (c) before becoming eligible for an  
10 appointment under this rule.

11  
12 (3) Beginning in 2009, each appointed counsel must certify to the court  
13 before the end of February of each year that he or she has completed  
14 the continuing education required for the preceding calendar year.

15  
16 (4) The certification of qualifications and continuing education required by  
17 this subdivision must be on forms adopted by the Judicial Council. The  
18 certification forms must be submitted to and retained by the court, but  
19 are not to be filed or lodged in a case file.  
20

21 **(h) Reporting**  
22

23 The AOC may require courts to report appointed counsel's qualifications and  
24 completion of continuing education required by this rule to ensure  
25 compliance with Probate Code section 1456.  
26

1 Title 10

2  
3 Judicial Administration Rules

4  
5 Rule 10.462. Trial court judges and subordinate judicial officers<sup>1</sup>

6  
7 (a)–(c) \* \* \*

8  
9 (d) Hours-based continuing education

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11 (1) \* \* \*

12  
13 (2) The following education applies toward the expected or required 30  
14 hours of continuing judicial education:

15  
16 (A) \* \* \*

17  
18 (B) Any other education offered by a provider listed in rule ~~10.471(a)~~  
19 10.481(a) and any other education, including education taken to  
20 satisfy a statutory or other education requirement, approved by  
21 the presiding judge as meeting the criteria listed in rule ~~10.471(b)~~  
22 10.481(b).

23  
24 (3)–(5) \* \* \*

25  
26 (e)–(g) \* \* \*

27  
28 **Rule 10.468. Content-based and hours-based education for superior court**  
29 **judges and subordinate judicial officers regularly assigned to hear**  
30 **probate proceedings**

31  
32 (a) **Definitions**

33  
34 As used in this rule, the following terms have the meanings stated below:

35  
36 (1) “Judge” means a judge of the superior court.

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<sup>1</sup> This proposal will be presented to the Judicial Council in October of 2007, two months after a proposal of the Governing Committee of the Center for Judicial Education and Research to amend rule 10.462 and renumber and amend current rules 10.463, 10.464, and 10.471, also to be proposed for adoption effective on January 1, 2008. The proposed renumbering of the rules will be shown in both proposals, but each proposal will show only its recommended changes in the existing text of its proposed amended rules, including current rules 10.462, 10.464, and 10.471. The changes recommended by both proposals in the text of the latter rules will be made if both proposals are adopted by the Judicial Council.

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- (2) “Subordinate judicial officer” has the meaning specified in rule 10.701(a).
- (3) “Judicial officer” means a judge or a subordinate judicial officer.
- (4) “Probate proceedings” are decedents’ estates, guardianships and conservatorships under Division 4 of the Probate Code, trust proceedings under Division 9 of the Probate Code, and other matters governed by provisions of that code and the rules in title 7 of the California Rules of Court.
- (5) A judicial officer “regularly assigned to hear probate proceedings” is a judicial officer who is:
  - (A) Assigned to a dedicated probate department where probate proceedings are customarily heard on a full-time basis;
  - (B) Responsible for hearing most of the probate proceedings filed in a court that does not have a dedicated probate department; or
  - (C) Responsible for hearing probate proceedings on a regular basis in a department in a branch or other location remote from the main or central courthouse, whether or not he or she also hears other kinds of matters in that department, and whether or not there is a dedicated probate department in the main or central courthouse.
- (6) “AOC” is the Administrative Office of the Courts.
- (7) “CJER” is the AOC’s Education Division/Center for Judicial Education and Research.
- (8) “CJA” is the California Judges Association.

**(b) Content-based requirements**

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

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2       (2) The education required in (1) is in addition to the New Judge  
3 Orientation program for new judicial officers and the B. E. Witkin  
4 Judicial College required under rule 10.462(c)(1)(A) and (C), and may  
5 be applied towards satisfaction of the 30 hours of continuing education  
6 expected of judges and required of subordinate judicial officers under  
7 rule 10.462(d).  
8  
9       (3) The education required in (1) must be provided by CJER, CJA, or the  
10 judicial officer's court. CJER is responsible for identifying content for  
11 this education and will share the identified content with CJA and the  
12 courts.  
13  
14       (4) The education required in (1) may be by traditional (face to face) or  
15 distance-learning means, such as broadcasts, videoconferences, or on-  
16 line coursework, but may not be by self-study.

17  
18 **(c) Hours-based continuing education**

- 19  
20       (1) Each judicial officer regularly assigned to hear probate proceedings  
21 must complete 18 hours of continuing education every three years, with  
22 a minimum of six hours per year on probate guardianships and  
23 conservatorships, including court-supervised fiduciary accounting,  
24 beginning on January 1 of the year following completion of the  
25 education required in (b)(1) or, if he or she is exempt from that  
26 education, beginning in the year the assignment commenced after the  
27 effective date of this rule.  
28  
29       (2) The first continuing education period for judicial officers who were  
30 regularly assigned to hear probate proceedings before the effective date  
31 of this rule and who continue in the assignment after that date is for two  
32 years, from January 1, 2008, through December 31, 2009, rather than  
33 three years. The continuing education requirements in (1) are prorated  
34 for the first continuing education under this paragraph. The first full  
35 three-year period of continuing education for judicial officers under this  
36 paragraph begins on January 1, 2010.  
37  
38       (3) The number of hours of education required in (1) may be reduced  
39 proportionately for judicial officers whose regular assignment to hear  
40 probate proceedings is for a period of less than three years, but the  
41 education required in any full calendar year in the assignment is a  
42 minimum of six hours.  
43

- 1           (4) The education required in (1) may be applied towards satisfaction of  
2 the 30 hours of continuing education expected of judges or required of  
3 subordinate judicial officers under rule 10.462(d).  
4  
5           (5) A judicial officer may fulfill the education requirement in (1) through  
6 AOC-sponsored education, a provider listed in rule 10.481(a), or a  
7 provider approved by the judicial officer’s presiding judge as meeting  
8 the education criteria specified in rule 10.481(b).  
9  
10          (6) The education required in (1) may be by traditional (face-to-face) or  
11 distance-learning means, such as broadcasts, videoconferences, or on-  
12 line coursework, but may not be by self-study.  
13  
14          (7) A judicial officer who serves as faculty for a California court-based  
15 audience, as defined in rule 10.462(d)(4), for education required in (1)  
16 may be credited with three hours of participation for each hour of  
17 presentation the first time a course is given and two hours for each hour  
18 of presentation each subsequent time the course is given.

19  
20 **(d) Extension of time**

21  
22 The provisions of rule 10.462(e) concerning extensions of time apply to the  
23 content-based and hours-based education required under (b) and (c) of this  
24 rule.

25  
26 **(e) Recordkeeping and reporting**

- 27  
28          (1) The provisions of rule 10.462(f) and (g) concerning, respectively,  
29 tracking participation, recordkeeping, and summarizing participation by  
30 judges, and tracking participation by subordinate judicial officers,  
31 apply to the education required under this rule. However, courts, in  
32 addition to individual judges, must track judges’ participation and  
33 completion of the education required by this rule.  
34  
35          (2) Presiding judges’ records of judicial officer participation in the  
36 education required by this rule are subject to audit by the AOC under  
37 rule 10.462. The AOC may require courts to report participation by  
38 judicial officers in the education required by this rule to ensure  
39 compliance with Probate Code section 1456.

1 **Rule ~~10.463~~ 10.473. Trial court executive officers**

2  
3 \* \* \*

4 **Rule ~~10.464~~ 10.474. Trial court managers, supervisors, and personnel**

5  
6 (a)–(b) \* \* \*

7  
8 (c) **Hours-based requirements**

9  
10 (1)–(3) \* \* \*

11  
12 (4) Any education offered by a provider listed in rule ~~10.471(a)~~ 10.481(a)  
13 and any other education, including education taken to satisfy a  
14 statutory, rules-based, or other education requirement, that is approved  
15 by the executive officer or the employee's supervisor as meeting the  
16 criteria listed in rule ~~10.471(b)~~ 10.481(a) applies toward the orientation  
17 education required under (b) and the continuing education required  
18 under (c)(1) and (2).  
19

20 **Rule 10.478. Content-based and hours-based education for court**  
21 **investigators, probate attorneys, and probate examiners**

22  
23 (a) **Definitions**

24  
25 As used in this rule, the following terms have the meanings specified below,  
26 unless the context or subject matter otherwise require:  
27

28 (1) A “court investigator” is a person described in Probate Code section  
29 1454(a) employed by or under contract with a court to provide the  
30 investigative services for the court required or authorized by law in  
31 guardianships, conservatorships, and other protective proceedings  
32 under Division 4 of the Probate Code;  
33

34 (2) A “probate examiner” is a person employed by a court to review filings  
35 in probate proceedings in order to assist the court and the parties to get  
36 the filed matters properly ready for consideration by the court in  
37 accordance with the requirements of the Probate Code, the rules in title  
38 7 of the California Rules of Court, and the court’s local rules;  
39

40 (3) A “probate attorney” is an active member of the State Bar of California  
41 who is employed by a court to perform the functions of a probate  
42 examiner and also to provide legal analysis, recommendations, advice,  
43 and other services to the court pertaining to probate proceedings.

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

(5) “AOC” is the Administrative Office of the Courts.

(6) “CJER” is the AOC’s Education Division/Center for Judicial Education and Research.

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

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

(A) Court process and legal proceedings, including Probate Code provisions governing investigations and other duties of court investigators in guardianships and conservatorships; Family Code provisions governing child custody applicable to guardianships, including detriment to the child in contested guardianships; investigation report requirements; evaluation of alternatives to conservatorship; determination of best interests of the conservatee’s person and estate; determination of least restrictive residence alternative necessary to meet the needs of the conservatee, fiduciary accountings; substituted judgment; and testifying in court;

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

(C) Medical issues, including developmental disabilities in children and adults; mental health issues in children and adults, including mental function deficits and their relation to the need for a conservatorship; substance abuse—detection, screening, effects, and intervention; reviewing medical records; medical terminology; medications; and drug interactions;

1           (D) Access to and use of criminal-record information, confidentiality,  
2           ethics, conflicts of interest;

3  
4           (E) Accessing and evaluating community resources for children and  
5           mentally impaired elderly or developmentally disabled adults; and

6  
7           (F) Interviewing children and persons with mental function or  
8           communication deficits.

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

15  
16       (3) The education required in (1) may be applied to the specific-job portion  
17       of the orientation course required for all new court employees under  
18       rule 10.474(b)(2)(D) and the continuing education required for all non-  
19       managerial or non-supervisory court employees under rule  
20       10.474(c)(2).

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

25  
26       (c) **Content-based education for probate attorneys**

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

32  
33       (2) A probate attorney may fulfill the education requirement in (1) through  
34       AOC-sponsored education, a provider listed in rule 10.481(a), or a  
35       provider approved by the court executive officer or the probate  
36       attorney's supervisor as meeting the education criteria specified in rule  
37       10.481(b).

38  
39       (3) The education required in (1) may be applied to the specific-job portion  
40       of the orientation course required for all new court employees under  
41       rule 10.474(b)(2)(D) and the continuing education required for all non-  
42       managerial or non-supervisory court employees under rule  
43       10.474(c)(2).

1  
2 (4) The education required in (1) may be by traditional (face-to-face) or  
3 distance-learning means, such as broadcasts, videoconferences, or on-  
4 line coursework, but may not be by self-study.  
5

6 **(d) Content-based education for probate examiners**  
7

8 (1) Each probate examiner must complete 30 hours of education within one  
9 year of his or her start date after January 1, 2008 in probate-related  
10 topics, of which 18 hours must be in guardianships and  
11 conservatorships, including court-appointed fiduciary accounting.  
12

13 (2) A probate examiner may fulfill the education requirement in (1)  
14 through AOC-sponsored education, a provider listed in rule 10.481(a),  
15 or a provider approved by the court executive officer or the probate  
16 examiner's supervisor as meeting the education criteria specified in rule  
17 10.481(b).  
18

19 (3) The education required in (1) may be applied to the specific-job portion  
20 of the orientation course required for all new court employees under  
21 rule 10.474(b)(2)(D) and the continuing education required for all non-  
22 managerial or non-supervisory court employees under rule  
23 10.474(c)(2).  
24

25 (4) The education required in (1) may be by traditional (face-to-face) or  
26 distance-learning means, such as broadcasts, videoconferences, or on-  
27 line coursework, but may not be by self-study.  
28

29 **(e) Hours-based education for court investigators**  
30

31 (1) Each court investigator must complete 12 hours of continuing  
32 education on some or all of the general topics listed in (b)(1) each  
33 calendar year. For court investigators employed by or performing  
34 services under contract with the court before the effective date of this  
35 rule, the first calendar year the education is required begins on January  
36 1, 2008. For court investigators who begin their employment or  
37 performance of services under contract with the court after the effective  
38 date of this rule, the first year this education is required begins on  
39 January 1st of the year immediately following completion of the  
40 education required in (b).  
41

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

1                   or a provider approved by the court executive officer or the court  
2                   investigator’s supervisor as meeting the education criteria specified in  
3                   rule 10.481(b).

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

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

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

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

25  
26          (2)   A probate attorney may fulfill the education requirement in (1) through  
27          AOC-sponsored education, a provider listed in rule 10.481(a), or a  
28          provider approved by the court executive officer or the probate  
29          attorney’s supervisor as meeting the education criteria specified in rule  
30          10.481(b).

31  
32          (3)   The education required in (1) may be applied to the continuing  
33          education required for all non-managerial or non-supervisory court  
34          employees under rule 10.474(c)(2).

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

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

41  
42          (1)   Each probate examiner must complete 12 hours of continuing education  
43          each calendar year in probate-related subjects, of which six hours per

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

9  
10       (2) A probate examiner may fulfill the education requirement in (1)  
11       through AOC-sponsored education, a provider listed in rule 10.481(a),  
12       or a provider approved by the court executive officer or the probate  
13       examiner’s supervisor as meeting the education criteria specified in rule  
14       10.481(b).

15  
16       (3) The education required in (1) may be applied to the continuing  
17       education required for all non-managerial or non-supervisory court  
18       employees under rule 10.474(c)(2).

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

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

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

28  
29       **(i) Recordkeeping and reporting**

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

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

1 **Rule ~~10.471~~, 10.481. Approved providers; approved course criteria**

2  
3 **(a) Approved providers**

4  
5 Any education program offered by any of the following providers that is  
6 relevant to the work of the courts or enhances the individual participant's  
7 ability to perform his or her job may be applied toward the education  
8 requirements stated in rule 10.462(d), ~~10.463(e)~~ 10.471(c), or ~~10.464(b)-(e)~~  
9 10.474(b)-(c):

10  
11 (1)—(21) \* \* \*

12  
13 (22) California Association of Superior Court Investigators; and

14  
15 ~~(22)~~(23) Superior Court Clerks' Association of the State of California.

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

18  
19 Education is not limited to the approved providers listed in (a). Any  
20 education from a provider not listed in (a) that is approved by the presiding  
21 judge as meeting the criteria listed below may be applied toward the  
22 continuing education expectations and requirements for judges and  
23 subordinate judicial officers or requirements for court executive officers  
24 stated in rule 10.462(d) or ~~10.463(e)~~ 10.471(c), respectively. Similarly, any  
25 education from a provider not listed in (a) that is approved by the court  
26 executive officer or by the employee's supervisor as meeting the criteria  
27 listed below may be applied toward the orientation or continuing education  
28 requirements for managers, supervisors, and employees in rule  
29 ~~10.464~~10.474(b) and (c)(1), (2) or the content-based or continuing education  
30 for probate court investigators, probate examiners, and probate attorneys in  
31 rule 10.478.

32  
33 (1)—(2) \* \* \*

1  
2  
3 **Division 4. Trial Court Administration**

4 **Chapter 7. Qualifications of Court Investigators, Probate Attorneys, and**  
5 **Probate Examiners**

6 **Rule 10.776. Definitions**

7  
8 As used in the rules in this chapter, the following terms have the meanings stated  
9 below:

- 10  
11 (1) A “court investigator” is a person described in Probate Code section  
12 1454(a) employed by or under contract with a court to provide the  
13 investigative services for the court required or authorized by law in  
14 guardianships, conservatorships, and other protective proceedings  
15 under Division 4 of the Probate Code;  
16  
17 (2) A “probate examiner” is a person employed by a court to review filings  
18 in probate proceedings in order to assist the court and the parties to get  
19 the filed matters ready for consideration by the court in accordance  
20 with the requirements of the Probate Code, title 7 of the California  
21 Rules of Court, and the court’s local rules;  
22  
23 (3) A “probate attorney” is an active member of the State Bar of California  
24 who is employed by a court to perform the functions of a probate  
25 examiner and also to provide legal analysis, recommendations, advice,  
26 and other services to the court pertaining to probate proceedings.  
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) An "accredited educational institution" is a college or university,  
35 including a community or junior college, accredited by a regional  
36 accrediting organization recognized by the Council for Higher  
37 Education Accreditation;  
38  
39 (6) “AOC” is the Administrative Office of the Courts.  
40

1 **Rule 10.777. Qualifications of court investigators, probate attorneys, and**  
2 **probate examiners**

3  
4 **(a) Qualifications of court investigators**

5  
6 Except as otherwise provided in this rule, a person who begins employment  
7 with a court or enters into a contract to perform services with a court as a  
8 court investigator on or after January 1, 2008, must:  
9

- 10 (1) Have a Bachelor of Arts or Bachelor of Sciences degree in a social  
11 science, behavioral science, liberal arts, or nursing from an accredited  
12 educational institution; and  
13  
14 (2) Have a minimum of two years' employment experience performing  
15 casework or investigations in a legal, financial, law enforcement, or  
16 social services setting.  
17

18 **(b) Qualifications of probate attorneys**

19  
20 Except as otherwise provided in this rule, a person who begins employment  
21 with a court as a probate attorney on or after January 1, 2008, must:  
22

- 23 (1) Be an active member of the State Bar of California for a minimum of  
24 five years; and  
25  
26 (2) Have a minimum of two year's total experience, pre- or post-Bar  
27 admission, in one or more of the following positions:  
28  
29 (A) Court-employed staff attorney;  
30  
31 (B) Intern, court probate department (minimum six-month period);  
32  
33 (C) Court-employed probate examiner or court-employed or court-  
34 contracted court investigator;  
35  
36 (D) Attorney in a probate-related public or private legal practice;  
37  
38 (E) Deputy public guardian or conservator;  
39  
40 (F) Child protective services or adult protective services worker, or  
41 juvenile probation officer; or  
42

1           (G) Private professional fiduciary appointed by a court; or employee  
2           of a private professional fiduciary or bank or trust company with  
3           significant fiduciary responsibilities, including responsibility for  
4           court accountings.

5  
6   **(c) Qualifications of probate examiners**

7  
8   Except as otherwise provided in this rule, a person who begins employment  
9   with a court as a probate examiner on or after January 1, 2008, must:

10  
11   (1) Have a Bachelor of Arts or Bachelor of Sciences degree from an  
12    accredited educational institution; and

13  
14   (2) Have a minimum of two years' employment experience:

15  
16       (A) With a court;

17  
18       (B) With a public or private law office, in a probate-related capacity;  
19       or

20  
21       (C) With a public guardian or conservator or a private professional  
22       fiduciary;

23  
24   or

25  
26   (3) Have a paralegal certificate from an accredited educational institution  
27    and a minimum of four years' of employment experience described in  
28    (2).

29  
30   **(d) Additional court-imposed qualifications and requirements**

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

37  
38   **(e) Exemption for smaller courts**

39  
40   The qualifications required under this rule may be waived by a court with  
41   four or fewer judges if it cannot find suitable qualified candidates for the  
42   positions covered by this rule, or for other grounds of hardship. A court  
43   electing to waive a qualification under this subdivision must make express

1 findings showing the circumstances supporting the waiver and disclosing all  
2 alternatives considered, including those not selected.

3  
4 **(f) Recordkeeping 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 Civil Cases**

## Item SP07-09 Response Form

**Title:** 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 rules 10.462, 10.464, and 10.471 of the California Rules of Court; renumber rules 10.463, 10.464, and 10.471; and adopt rules 7.1101, 10.468, 10.478, 10.776, and 10.777, effective January 1, 2008).

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

- Commenting on behalf of an organization**

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or [respond using the Internet](#) to:

**Address:** Ms. Camilla Kieliger,  
Judicial Council, 455 Golden Gate Avenue,  
San Francisco, CA 94102

**Fax:** (415) 865-7664    **Attention:** Camilla Kieliger

**Internet:** <http://www.courtinfo.ca.gov/invitationstocomment/commentform.htm>

<b>DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007</b>
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee.  
All comments will become part of the public record of the council's action.*