

Invitation to Comment

Title	Probate: Surety bonds in conservatorships and guardianships (adopt rule 7.207 of the California Rules of Court).
Summary	The proposed new rule would fulfill a mandate to define and implement a statutory increase in the amount of the surety bond required of conservators and guardians of estates to include a reasonable amount for the cost of recovery on the bond, including reasonable attorney's fees and costs.
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	<p>Probate Code section 2320 requires, except as otherwise provided by statute, every person appointed as conservator or guardian of the estate of a conservatee or minor to give a surety bond approved by the court. The bond is for the benefit of the conservatee or ward and all persons interested in the conservatorship or guardianship estate, and is conditioned on the faithful performance of the duties of the office according to law. Section 2320(c) establishes the amount of the bond as the sum of the estimated annual gross income of the estate, the value of the personal property of the estate, and the annual amount of certain specified public payments for the benefit of the conservatee or ward. Under rule 7.204(c)(3) of the California Rules of Court, the amount of the bond also includes the value of estate real property, less encumbrances, if the conservator or guardian has independent power to sell the property without court confirmation or approval under Probate Code sections 2590 and 2591(d).</p> <p>The Omnibus Conservatorship and Guardianship Reform Act of 2006¹ includes an amendment of section 2320(c) adding a new paragraph (4). The new paragraph increases the amount of required bond to include a reasonable amount for the cost of recovery on the bond, including attorney's fees and costs. The specific amount of the</p>

¹ 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 rule in this proposal is contained in section 19 of chapter 493 (AB 1363).

increase is not specified in the legislation. Instead, the new paragraph provides that the Judicial Council must adopt a rule of court, effective January 1, 2008, to implement the provision.²

The Probate and Mental Health Advisory committee proposes new rule 7.207 of the California Rules of Court in response to the Legislature's directive. Subdivision (c) of the rule would establish the reasonable amount required by the statute as a sliding percentage of the property, income, and payments subject to the bond under section 2320(c)(1)–(3) and rule 7.204, starting with 20 per cent of the first \$200,000 of such property, plus 12 percent of the value of such property above \$200,000 up to \$1,000,000, plus 2 percent of the value of such property above \$1,000,000.

Proposed rule 7.207(a) would require conservators and guardians of estates appointed after December 31, 2007 to give a bond that includes the additional amount required by the rule. Conservators and guardians of estates appointed before January 1, 2008, or their counsel, would be required under new rule 7.207(b) and existing rule 7.204(a) and (b) to apply to the court for an order to increase the bond to include the additional amount required by the statute and the rule, and thereafter to furnish the additional amount ordered by the court.

The Legislature did not expressly define the “cost of recovery to collect on the bond.” The phrase could mean merely the cost of recovery after the court surcharges the conservator or guardian, a relatively modest amount in most circumstances. The phrase could also include the cost of the surcharge litigation. A surcharge order is a necessary predicate to collection on the bond; the cost of litigation to obtain a surcharge order is a reasonable and foreseeable cost of collection.

The advisory committee established the amount of additional bond based on its view that the Legislature intended the reasonable cost of collection on the bond to include the cost of surcharge litigation, not just the cost of collection of amounts found due under the surcharge

² Section 2320(c)(4) provides in full as follows:

“(4) On or after January 1, 2008, a reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs. The Judicial Council shall, on or before January 1, 2008, adopt a rule of court to implement this paragraph.”

order.

The following table shows the amounts of additional bond and total bond that would be required under the proposed rule for estates with property subject to the bond in the amounts of \$150,000, \$200,000, \$500,000, \$1,000,000, and \$1,500,000:

Bondable Property	Calculation	Additional Bond	Total Bond
\$ 150,000	20% of \$150,000	\$ 30,000	\$ 180,000
\$ 200,000	20% of \$200,000	\$ 40,000	\$ 240,000
\$ 500,000	20% of \$200,000 12% of \$300,000	\$ 40,000 \$ <u>36,000</u> \$ <u>76,000</u>	\$ 576,000
\$1,000,000	20% of \$200,000 12% of \$800,000	\$ 40,000 \$ <u>96,000</u> \$ <u>136,000</u>	\$1,136,000
\$1,500,000	20% of \$ 200,000 12% of \$800,000 2% of \$500,000	\$ 40,000 \$ 96,000 \$ <u>10,000</u> \$ <u>146,000</u>	\$1,646,000

Comment is requested concerning the amount of the proposed additional bond.

The text of proposed rule 7.207 is attached beginning at page 4.

Attachment

Rule Proposal

Rule 7.207 of the California Rules of Court would be adopted, effective January 1, 2008, to read:

1 **Rule 7.207. Bonds of Guardians and Conservators**

2
3 **(a) Bond for appointments after December 31, 2007**

4
5 Except as otherwise provided by statute, every guardian or conservator of the
6 estate appointed after December 31, 2007 must furnish a bond that includes
7 an amount determined under (c) as a reasonable amount for the cost of
8 recovery to collect on the bond under Probate Code section 2320(c)(4).
9

10 **(b) Additional bond for appointments before January 1, 2008**

11
12 Except as otherwise provided by statute, every guardian or conservator of the
13 estate appointed before January 1, 2008, and the guardian's or conservator's
14 attorney, must after that date make an application to increase the bond in the
15 manner described in rule 7.204 to include an additional amount determined
16 under (c) as a reasonable amount for the cost of recovery to collect on the
17 bond under Probate Code section 2320(c)(4), and must thereafter promptly
18 furnish the increased amount of bond ordered by the court.
19

20 **(c) Amount of bond for the cost of recovery on the bond**

21
22 The reasonable amount of bond for the cost of recovery to collect on the
23 bond, including attorney's fees and costs, under Probate Code section
24 2320(c)(4) is:
25

26 (1) Twenty percent (20%) of the value up to and including \$200,000 of the
27 following:

28
29 (A) The appraised value of personal property of the estate;

30
31 (B) The appraised value, less encumbrances, of real property of the
32 estate that the guardian or conservator has the independent power
33 to sell without confirmation of the court under Probate Code
34 sections 2590 and 2591(d);

35
36 (C) The probable annual income from all assets of the estate; and
37

- 1 (D) The probable annual gross payments described in Probate Code
2 section 2320(c)(3); plus
3
4 (2) Twelve percent (12%) of the value above \$200,000 up to and including
5 \$1,000,000 of the property, income, and payments described in (1);
6 plus
7
8 (3) Two percent (2%) of the value above \$1,000,000 of the property,
9 income, and payments described in (1).

Item SP07-12 Response Form

Title: Probate: Surety bonds in conservatorships and guardianships (adopt rule 7.207 of the California Rules of Court).

- 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>

DEADLINE FOR COMMENT: 5:00 p.m., Friday, July 13, 2007

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.