JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS

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Report

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee
Hon. Don Edward Green, Chair
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DATE: September 10, 2007

SUBJECT: Probate: Additional Surety Bond in Conservatorships and Guardianships to Cover Cost of Recovery on the Bond (adopt rule 7.207 of the California Rules of Court) (Action Required)

Issue Statement

Probate Code section 2320 requires, with certain exceptions, every person appointed as conservator or guardian of the estate of a conservatee or ward 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.

Section 2320(c) establishes the amount of the bond as the sum of the values of specified items of estate income and personal property and public benefit payments paid for the benefit of the conservatee or ward. By rule 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.[1]

[1] See rule 7.204(c)(3) of the California Rules of Court. The independent power to sell real property of the estate without court approval or confirmation may be requested by a conservator or guardian and authorized by the court under Probate Code sections 2590 and 2591(d).

The Omnibus Conservatorship and Guardianship Reform Act of 2006[2] (Omnibus Act) amends section 2320(c) by adding a new paragraph (4). The new paragraph increases the amount of required surety bond to include a reasonable amount for the cost of recovery on the bond, including attorney's fees and costs. The amount of the 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.[3]

Recommendation

In response to the mandate of Probate Code section 2320 as amended by the Omnibus Act, the Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2008, adopt rule 7.207 of the California Rules of Court to establish the amount of additional surety bond to be required for the cost of recovery on the bond, and to provide a reasonable period of time for conservators and guardians of estates appointed and qualified before January 1, 2008, to give the additional amount of bond.

The text of proposed new rule 7.207 follows this report, at pages 8–9.

Rationale for Recommendation

The first three paragraphs of Probate Code section 2320(c) establish the amount of the surety bond required in a conservatorship or guardianship of the estate 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 public payments made for the benefit of the conservatee or ward. Current rule 7.204(c)(3) adds to that total the net value of estate real property if the fiduciary may sell it without court approval or confirmation. These items of property, income, and payments are sometimes collectively referred to as the estate's bondable property.

Proposed rule 7.207(c) would define the additional bond required by new paragraph (4) of section 2320(c) as the sum of the following percentages of the value of bondable property of the estate:

- 10 percent of the first $500,000 of bondable property, plus

[2] Stats. 2006, ch. 490–493 (respectively, Senate Bill 1116, Senate Bill 1550, Senate Bill 1716, and Assembly Bill 1363). The mandate for the rule in this proposal is contained in section 19 of chapter 493 (AB 1363).

[3] 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.

- 12 percent of the value of bondable property above $500,000 to $1,000,000, plus

- 2 percent of the value of bondable property above $1,000,000.

This formula would lead to the amounts of additional bond and total bond shown in the table attached to this report at page 7 for estates of various sizes from $150,000 to $1,500,000. The additional bond ranges from $15,000 for an estate with bondable property of $150,000, to $120,000 for an estate containing $1,500,000 of bondable property.

Rule 7.207(a) would require a conservator or guardian appointed after January 1, 2008, to give the bond required by the statute upon appointment, including the additional bond required by the rule. Under subdivision (b) of the rule, a conservator or guardian appointed before January 1, 2008 would be required to follow the procedure described in current rule 7.204 to give the additional bond required by the new rule. That procedure requires the fiduciary or the fiduciary's attorney to make an ex parte application to the court for an order increasing the bond and thereafter to furnish the additional bond. In this context, the additional bond would be the amount required by rule 7.207(c) and Probate Code section 2320(c)(4). Rule 7.207(b) would require the fiduciary to furnish the increased amount of bond ordered by the court no later than June 30, 2008.

Alternative Actions Considered

The advisory committee initially considered providing a simple flat dollar figure for the additional bond required by section 2320(c)(4), based on the phrase "the cost of recovery to collect on the bond . . ." in the statute. This phrase could be interpreted to refer merely to the cost of collection on the bond after imposition of a surcharge fixing the liability of the fiduciary, a relatively minor cost. The committee decided to interpret the phrase broadly to include the cost of seeking the surcharge, not just the post surcharge collection costs.[4]

The committee also considered setting the additional bond at a single fixed percentage of the bondable property, regardless of the size of the estate. The

[4] This interpretation is supported by Code of Civil Procedure section 996.480, part of the Bond and Undertaking Law expressly made applicable to conservator and guardian surety bonds by Probate Code section 2320(e). Section 996.480 provides that if the amount due on a bond is established by a final judgment (including a surcharge judgment, which is a judgment against the fiduciary that the surety is obligated under the bond to pay, up to the amount of the bond), a claim is made on the surety for payment, and the surety fails to pay, the surety is responsible for the costs incurred in obtaining a judgment against the surety, including reasonable attorney's fees. The surety's liability for these costs is not limited to the face amount of the bond. (See sections 996.470(a) and 996.480(a)(2).) An additional amount of bond for attorney's fees and costs incurred in collecting on the bond would be unnecessary if collecting on the bond were limited to efforts to enforce a surcharge order against the surety.

committee rejected this approach in favor of a sliding scale of percentages because of its concern that a single percentage from all estates might raise an insufficient additional bond in the more numerous smaller estates while at the same time raising an unnecessarily high amount of additional bond in the large estates. As noted below, however, because of concern about the burden of the cost of the additional bond on smaller estates, the committee did modify the rule to bring the percentages in the small and medium estates closer together.

Comments From Interested Parties

This proposal was circulated for comment in a special comment cycle to a list of judicial officers, probate examiners and attorneys, other court staff interested in probate matters, probate-interest sections of the State Bar and local bar associations, and sureties and their representatives, in addition to court executives, presiding judges, individuals, and organizations with a more generalized interest in the trial courts.

Seventeen comments on the proposal were received. Sixteen commentators were opposed to the proposal or would approve it if changes are made. The seventeenth commentator, Mr. Peter S. Stern, representing the Executive Committee of the State Bar's Trusts and Estates Section, approved the proposal but also recommended support of additional legislation to clarify the new statutory provision, legislation that is described in the following paragraph. A chart containing the comments and the committee's responses is attached following the text of rule 7.207, beginning at page 10.

The most thorough comments were made by Messrs. Lee Back, Todd Christensen, Will Mingrum, John Rough, and Ms. Colleen O'Hara, all representatives or agents for sureties. Mr. Back expressed concern that the proposed bond called for direct action against a surety because the new statute does not expressly require a surcharge against the fiduciary as a condition of recovery on the bond for the costs of collection. The committee's response advises that Assembly Bill 1727 in the 2007 Legislature, enrolled and sent to the Governor on September 4, 2007, would address this concern. Section 15 of this legislation would add the following language to Probate Code section 2320(c)(4), immediately after the first sentence quoted in footnote 3 above[5]:

[5] This portion of Assembly Bill 1727 was developed and sponsored in the Legislature by the Executive Committee of the State Bar's Trusts and Estates Section, of which a member of this committee, Mr. Peter S. Stern, is vice-chair. Several members of the advisory committee and its staff assisted legislative staff in drafting many other parts of AB 1727, which includes provisions that would enact some of the recommendations that will be contained in the final report of the Probate Conservatorship Task Force to the Judicial Council. The committee anticipated that AB 1727 would be signed into law by Governor Schwarzenegger this year. However, the Governor's recent veto of the first year's funding of court operations under the Omnibus Act and his stated desire that the effective date of the act be deferred increases the likelihood that he will not sign this legislation. Despite the Governor's veto, the Legislature

> "The attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duty under this code shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond."

Mr. Back also recommends that rather than one total bond there should be two: the "regular" bond and a separate undertaking to secure payment of the fees and costs described in section 2320(c)(4). But section 2320 plainly requires only one surety bond for the entire estate. The committee believes, therefore, that this recommendation would be more appropriately made to the Legislature.

Mr. Back also urges a construction of section 2320(c)(4) that would permit the court to limit the surcharge against the guardian or conservator to a "reasonable" amount of attorney's fees incurred in collecting on the bond. The committee supports this construction. The statute calls for the additional bond to be in a reasonable amount for the cost of recovery, including attorney's fees and costs. Thus the attorney's fees must also be reasonable. The court has inherent power to determine the reasonable amount of fees to include in its surcharge order as an award against the fiduciary. The court clearly has authority to limit attorney's fees recoverable against a fiduciary under its supervision to a reasonable amount.

The committee disagrees, however, with another comment made by Mr. Back. He urges an interpretation of section 2320(c)(4) that would limit the amount of recoverable attorney's fees and costs to the amount of the additional bond. In the committee's view, the court would determine a reasonable attorney's fee and other litigation costs under the circumstances existing at the time of a surcharge order after trial of the surcharge action. The amount of fees and costs deemed reasonable at that point might well exceed the amount of additional bond required by section 2320(c)(4) under the formula provided in rule 7.207.

Ms. Colleen O'Hara, another surety representative, points out that it would be difficult or impossible to issue all the additional bonds for conservators and guardians appointed before January 1, 2008, by that date, the effective date of the rule. The committee agrees with her comment and has revised the rule to give these fiduciaries until June 30, 2008, to give the additional bond required by the rule.

Ms. Mary Joy Quinn, the manager of the probate department of the Superior Court in San Francisco, proposes an alternative, a flat 10 percent of bondable property, primarily based on the greater ease of determining the amount of additional bond.

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did not change the effective date of any portion of the Omnibus Act, including the bond provisions of section 2320.

As noted above, the committee had rejected this approach initially because of its concern that a flat percentage might be insufficient to cover the cost of collection on the bond in smaller estates, while raising an unnecessary amount of additional bond in the larger estates. However, as noted below, the committee did reduce the percentage applicable to the smaller estates, those valued below $200,000 of bondable property, from 20 percent to 10 percent; and also lowered the percentage applicable to estates valued from $200,000 to $500,000 from 12 percent to 10 percent.

Mr. Stuart Zimring, an attorney practicing in North Hollywood and a former president of the National Academy of Elder Law Attorneys, comments that the amount of additional bond for estates of $200,000 or less of bondable property in the rule circulated for comment, 20 percent of the value of such property, is excessive. Mr. Joseph Chairez, commenting on behalf of the Orange County Bar Association, agrees with him. The committee agrees with their recommendations and has revised the rule to provide that the additional bond would equal 10 percent of the value of bondable property up to $500,000. The 12 percent rate, which would have applied to estates valued from $200,000 to $1,000,000, has been retained in the revised rule for estates valued from $500,000 to $1,000,000.

Implementation Requirements and Costs

This rule will result in the usual costs associated with the adoption of any rule for the California Rules of Court. In addition, there will also be more work for the courts and increased associated costs because fiduciaries appointed before January 1, 2008, will be required to apply for, and the courts to make, orders for the additional amount of bond required by the rule. Courts will also be required to monitor fiduciaries to ensure that they promptly furnish the additional bond, and may have to conduct hearings leading to sanctions or even removal and replacement of some fiduciaries for failure to do so. The cost of bond premiums payable by the estates of conservatees and wards will also increase.

Bond Calculations Under Proposed Rule 7.207

Bondable Property	Calculation	Additional Bond	Total Bond
$ 150,000	10% of $150,000	$ 15,000	$ 150,000 15,000 $ 165,000
$ 500,000	10% of $500,000	$ 50,000	$ 500,000 50,000 $ 550,000
$ 750,000	10% of $500,000 plus 12% of $250,000	$ 50,000 30,000 $ 80,000	$ 750,000 80,000 $ 830,000
$1,000,000	10% of $500,000 plus 12% of $500,000	$ 50,000 $ 60,000 $110,000	$1,000,000 110,000 $1,110,000
$1,500,000	10% of $500,000 plus 12% of $500,000 plus 2% of $500,000	$ 50,000 $ 60,000 $ 10,000 $120,000	$1,500,000 120,000 $1,620,000

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

Rule 7.207. Bonds of conservators and guardians

(a) Bond for appointments after December 31, 2007

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

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

Except as otherwise provided by statute, every conservator or guardian of the estate appointed before January 1, 2008, and the conservator's or guardian's attorney, must after that date apply to increase the bond in the manner described in rule 7.204 to include an additional amount determined under (c), and must, no later than June 30, 2008, furnish the increased amount of bond ordered by the court.

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

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

(1) Ten percent (10%) of the value up to and including $500,000 of the following:

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

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

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

(D) The probable annual gross payments described in Probate Code section 2320(c)(3); and

(2) Twelve percent (12%) of the value above $500,000 up to and including $1,000,000 of the property, income, and payments described in (1); and

(3) Two percent (2%) of the value above $1,000,000 of the property, income, and payments described in (1).

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Ms. Therese F. Alvillar Occidental, California	AM	N	Agree with proposed changes if modified. Bond should be equal to value of estate without exception.	The amount of the bond is set by statute. The proposed rule is the extent of discretion granted the Judicial Council to affect the amount of the bond by rule of court.
2.	Mr. Lee Back Senior Vice President—Court HCC Surety Group Los Angeles, California	AM	Y	Agree with proposed changes if modified. It is problematic to subsume two protections under one bond. Issuing the addition as a distinct "recovery bond" would offer a clear bright line between the protections afforded by each of the two bonds and would make the transition and implementation easier on the courts and the public. **Practical Application** Because we anticipate difficulties incorporating two bond amounts essentially dedicated to differing purposes within one bond, we propose that the additional bond envisioned by rule 7.207 be in the form of a separate bond (a "recovery bond") dedicated specifically and exclusively for the recovery of the reasonable costs incurred in successful surcharge litigation concluded against the principal. The difficulties we anticipate could perhaps best be illustrated by means of an example.	The committee believes that providing for two bonds would be inconsistent with statute and thus outside the Judicial Council's power to accomplish by a rule of court. Probate Code section 2320(a) requires the conservator or guardian to give *a bond* approved by the court for the benefit of the conservatee or ward and all persons interested in the conservatorship or guardianship estate. The statute requiring the proposed rule, an

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					amendment adding subparagraph (4) to section 2320(c), adds another element to the list of items to be combined to determine the amount of the bond. The additional element is a "reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs." Section 2320 indicates that the Legislature contemplates that one bond is to be given, not two. Additional legislation to authorize two bonds and to address the apportionment issues raised by Mr. Back would appear necessary.
				Consider a conservatorship estate valued at $200,000. Under proposed rule 7.207(c) as it is currently written, when the court orders the requisite bond, it would take the $200,000.00 bondable property amount and add an additional 20 percent to it, ordering a bond totaling $240,000.00. Some time later, an objector successfully obtains a surcharge order against the conservator after a hotly contested court dispute. His attorney has billed him an inflated $65,000 for his legal services, knowing that recovery is afforded under the bond. The objector then seeks to recover the $65,000 sum against the bond. The total bond is for $240,000.00 and includes recovery of legal fees	Although the amount of the bond includes a sum representing a "reasonable amount for the cost of recovery to collect on the bond," the total of the surcharge would be the loss to the estate or the harm done to an interested person covered by the bond caused by the fiduciary, including attorney's fees and costs incurred to collect on the bond. In Mr. Back's example, only if the loss or harm exclusive of the attorney's fees and costs of collection was the entire estate subject to the bond would the bond

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				in the event of a surcharge, per the new rule. As a consequence, the objector believes he can recover the entire amount of his legal fees.	become insufficient to make good all of the loss, including the $65,000 of attorneys' fees. For example, if the loss to the estate were $150,000 plus $65,000 attorney's fees and costs, the total $215,000 loss would be within the $240,000 bond posted under the proposed rule as it was circulated for comment.
				Having been subsumed into the bond protecting the conservatee's property, there is no clear bright line dividing the bond protecting the conservatee's property itself from the bond allocated to recovery of legal expenses. Such a method begs for confusion and frustration. The objector expended $65,000.00 to help his relative, and he intends to recover the full amount. Isn't that what the bond is there for? If told that the limit was meant to be $40,000.00, he would argue that the $40,000.00 was calculated as the reasonable addition for recovery of expenses, but that nothing in the rule indicates that said figure is meant to be a cap on such recovery, or prevent use of the remaining bond amount for such recovery. Since the bond itself is large enough to allow full recovery and such recovery is one of its stated purposes, why shouldn't the objector recover the full amount he expended?	The statute requires the Judicial Council to develop a rule to implement the additional bond. No authority in the statute or elsewhere is suggested that would permit the council to fix by court rule the amount of attorney's fees and costs to be charged to a person interested in the estate to pursue a surcharge action against the conservator or guardian or to limit the fees and costs charged to the amount calculated for the additional bond. However, the statute says a "reasonable amount for the cost of recovery to collect on the bond, including attorney's fees and costs." A proposed clarifying amendment to section 2320(c)(4) would be added by section 15 of AB 1727.

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				The reason he shouldn't is because this would eat into the protection afforded the conservatee's estate under the primary bond, a result clearly not intended by legislation aimed at adding, not stripping, protections from conservatees. In our example, the potential exists for a payout of $65,000.00 under a $240,000.00 bond of which only $40,000.00 should in fact be allocated for recovery of surcharge expenses. Such a scenario could also arise should two surcharges be levied against a conservator, with the combined expenses exceeding the additional amount allocated for such expenses. Even if the above argument that no "formal cap" exists should fail, when the two sums are incorporated into one bond it would require only a mathematical error or an oversight to result in legal fees being recovered from the bond in excess of the amount set forth under the rule. In such an instance, it is the conservatee, for whose protection this rule is being enacted, who will suffer as a result of the inadvertent reduction of the remaining bond amount protecting against loss of his or her property. The best way to avoid this confusion and the potential for error is to craft the proposed "additional bond" as just that: an additional, distinct bond. This would clearly define the	The amendment would add the following language: "The attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duty under this code shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond." AB 1727 has passed out of the Legislature and is on its way to the Governor's office. If this legislation is enacted, the court would set the amount of surcharge in the surcharge litigation. This would include the amount of attorney's fees and costs for successful prosecution of the litigation. The fact that the statute defines this element of the bond coverage as a "reasonable amount" for fees and costs indicates that the court could disallow as a surcharge against the estate fees or costs incurred not deemed reasonable. The sum deemed reasonable at conclusion of the litigation may not always

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				parameters of the protection afforded by the bond. Objectors and their attorneys would know in advance the ceiling placed on recoverable legal expenses and would therefore be less inclined either to pursue frivolous lawsuits, or to do so unnecessarily aggressively or expansively. Avoiding the bonding of multiple concerns within one document also precludes any potential argument over allocation of the funds from the bond, thereby protecting the conservatee's assets by ensuring the integrity of the original underlying bond issued to cover those assets. Such a measure may also make the implementation of this additional bond easier for the courts and sureties. With a separate bond, the court can continue to operate as it has, without the necessity for any additional mathematical calculation. The court can determine the value of the underlying conservator's bond as it always has, and simply require "a separate recovery bond in the proportional amount as set forth under rule 7.207(c)." The Judicial Council "Appointment" form can be amended to include the above statement, and the courts can continue to function as they always have without any additional time consuming calculation or impediment.	correspond to the amount of bond for this item under the proposed rule's formula, but the court's authority to limit the amount of surcharge for fees and costs should prevent the worst abuses of the kind Mr. Back discusses. Code of Civil Procedure section 996.480, part of the Bond and Undertaking Law made applicable to conservator and guardian bonds by Probate Code section 2320(e), states that if the amount due on a bond is established by a final judgment (including a final surcharge judgment), a claim is made on the surety for payment, and the surety fails to pay, the surety is responsible for the costs incurred in obtaining a judgment against the surety, including reasonable attorney's fees. The amount of the surety's liability for these costs is not limited to the

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				Making this addition a distinct bond also obviates the necessity of the Sureties going back and rewriting each and every open guardian's and conservator's bond. This will save considerable time and expense, not to mention aid in expediting the issuance of these new bonds, which may well be a concern in ensuring timely compliance with this new law. It is also a more flexible system, allowing conservators and guardians who might otherwise be refused the addition from their original surety to keep their original bond, and find another surety to write the recovery bond. This would maximize those fiduciaries who are able to continue practicing in compliance with the law, where otherwise quite a number might find themselves in difficulties, unable to obtain complete bond coverage, and ultimately unable to be in compliance. For this reason, the surety proposes that this additional undertaking take the form of a new bond, titled "Recovery Bond." This bond will create a duty of the surety and conservator to the conservatee to cover the court costs and reasonable attorney's fees incurred by an objector in successfully obtaining and collecting on a surcharge order against the guardian or conservator. As a separate bond, both its purpose and its limit will be clear and explicitly set forth in the text of the bond, thereby	amount of the bond. (See sections 996.470(a) and 996.480(a)(2).) This provision indicates that the amount of the surcharge against the conservator for fees and costs under Probate Code section 2320(c)(4) will be the fees and costs incurred in the surcharge litigation, not those incurred in post-surcharge efforts to collect on the bond after a claim is made. This fact should reduce the overall size of attorney's fee and cost awards under section 2320(c)(4).

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				avoiding any confusion or mingling of funds that might otherwise occur. The standard and procedure for recovery under the "Recovery Bond" requires clear delineation In its Invitation to Comment, the Judicial Council states: "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 Legislature intended the reasonable cost of collection on the bond to include the cost of surcharge litigation." We derive from this that reasonable litigation costs will be covered by the recovery bond, but only if the objector successfully obtains a surcharge order against the conservator. We are concerned, however, about both the reasonableness and the prerequisite of the surcharge order being implied rather than explicit within the rule. Without explicit guidelines as to the scope and manner of	The quoted statement in the Invitation to Comment is supported by the fact, noted above, that sureties are responsible for attorney's fee and costs incurred by claimants in post surcharge-judgment collection litigation, without regard to the amount of the bond. If the Legislature had intended only post surcharge collection efforts to be covered, there would have been no need to increase the amount of the bond. The committee agrees with this statement. AB1727 in the 2007 Legislature, now on the Governor's desk, would require a surcharge and would limit an award of attorney's fees and other litigation costs against the fiduciary and the bond to a *successful* surcharge litigant.

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				recovery, we anticipate that the vague promise of recovery of legal fees up to the full amount of the bond may spawn an entirely new corps of attorneys charging unreasonable rates, and willing to take on claims that previously would have been deemed suspect on the presumption that they can recover all of their attorney's fees, win or lose. This increase in frivolous litigation will not benefit the conservatee. On the contrary, it will cause increased expenditure of the conservatee's funds in justifiably defending the conservator against such frivolous claims. While causing the bond to be issued as a separate "recovery bond" will already aid in limiting such scenarios by defining the amount subject to recovery, the mere existence of such a bond creates significant potential for abuse by attorneys charging excessive fees simply because they know the money is there for recovery under the bond. For this reason, we think it advisable to incorporate language setting forth the standard for recovery, and the procedure for recovery, explicitly within the rule. First, it should be rendered clear that recovery of such costs and expenses can only be made after a surcharge order is issued. This would encourage attorneys to consider clearly whether the claim is frivolous or not before accepting the case. Secondly, where the term "attorney's fees" is	The committee believes that the fees and costs to be charged against the bond can be shown in the surcharge litigation itself, perhaps in a cost memo procedure as is done in setting fees under a contract provision or under Civil Code section 1717. If AB 1727 is signed by the governor, the committee will

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				used, we believe it should read "*reasonable* attorney's fees." A provision should be added setting forth that said reasonableness is to be determined by the Court upon receipt of a Memorandum of Costs from the objector, to be filed after the surcharge order has been issued, and that the final amount payable under the bond be set forth in an order of the court. This measure, explicitly precluding recovery of excessive attorney's fees, would clearly convey that the bond is in place not to enrich attorneys, but to protect the conservatee. **Protecting the conservatee against frivolous claims by requiring a "counter-recovery bond"** As described above, the provision for recovery of legal fees under this rule may well turn into a double-edged sword by encouraging frivolous objections/claims. Attorneys that might have previously refused to take on less savory cases may well accept them in light of the promise of a significant fee recovery. Under the current program, however, should the conservator successfully defend against such claims, the legal expenses will continue to be paid by the conservatee's estate. With the anticipated increase in frequency of frivolous claims, this will result in a diminution of those very assets this legislation is meant to protect, and there is	consider amending the proposed rule to provide a procedure for an award. The committee believes that this proposal would require legislation. Vexatious litigant provisions may provide some limited relief, but current law makes it unlikely that a bond could be required of an "interested person" covered under the fiduciary's bond before he or she could bring a surcharge action against the fiduciary.

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				no provision in place to protect the conservatee from such loss. Without any additional contingency in place, this legislation might in fact result in increased waste of the conservatee's assets, directly inverse to its intended purpose. One method of addressing this concern would be to set up a "Counter-recovery bond," requiring the objector to put up a bond for reimbursement of the Conservatee's estate in the event the objector's litigation is deemed frivolous. As with the recovery bond, the determination of frivolity, as well as the reasonableness of the expenses, may be determined by the court. Please see the sample bond we have annexed hereto as Exhibit B. **Questions** We would also like clarification of the consequence for lack of compliance. What happens if those professional fiduciaries appointed prior to January 1, 2008, do not or cannot comply with 7.207(b)?	A conservator, professional or otherwise, who could not post the amount of bond required by law would be subject to removal or would be required to reduce the amount of required bond to a level he or she could give by seeking authority for deposits in blocked accounts. The committee has modified rule 7.207 to permit six months after January 1, 2008 for fiduciaries appointed before that

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					date to apply for and obtain the additional bond.
3.	Ms. Donna R. Bashaw Immediate past President, National Academy of Elder Law Attorneys (NAELA) Laguna Hills, California	N	Y	Agree with proposed changes if modified. As elder law attorneys committed to the safety and preservation of dignity of all dependent and older adults, we applaud the efforts of the committee to transform the Omnibus Conservatorship and Guardianship Reform Act of 2006 into practical reality. It is clear that such a task required a great deal of dedication, creativity, and just plain hard work. Thus, our comments are made not in the spirit of criticism bur in the spirit of appreciation of the enormity of the task to which you were commissioned. While most of our comments address specific issues or suggestions for enhancing the effectiveness of various individual provisions, our overarching concern about this entire enterprise is that in our zeal to prevent deplorable abuses of a few unscrupulous fiduciaries, we will render the conservatorship/guardianship process inaccessible to middle class families who will be unable to afford the increased expense which the new law now mandates. It is also our fear that the complexity of the new requirements and the sophistication of understanding necessary to perform the additional duties and tasks will	

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				preclude conscientious but nonprofessional, family members from serving on behalf of their vulnerable loved ones. We, therefore, urge you to keep these concerns in mind as you incorporate the various suggestions you receive during this comment period into your final work product. Rule 7.207 Bond of Guardians and Conservators We highly object to this rule as it gives no benefit to the ward or conservatee and is only an additional expense.	The proposed rule is required by statute. The Legislature might have considered the benefit to the ward or conservatee to be the increased ability of interested persons to seek surcharges against defalcating fiduciaries, financed by the bonds given by the fiduciaries.
4.	Mr. Joseph L. Chairez Orange County Bar Association Irvine, California	AM	Y	Agree with proposed changes if modified. Proposed additional amount of bond is excessive and should be reduced. Necessity of sureties to bring actions to recover on their bonds are the exception, not the rule, and the proposed additional amount of bond will result in financial hardship to small estates and result in windfall profits to surety companies.	The committee has reduced the percentage of bondable property to be added to bonds in smaller estates. This change should be approved by this commentator, but he has not indicated the association's view as to an appropriate percentage.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
5.	Mr. Todd Christensen Vice President Phillips Bonding & Insurance Agency, Inc. Oakland, California	N	N	Do not agree with proposed changes. I have been writing, providing and underwriting conservatorship and guardianship bonds in California for 18 years. I attend, and have attended the hearings in San Francisco's probate court since 1989.I am very familiar with the judges, examiners, investigators and clerks. Here are a few points to consider. In my 18 years I have seen several insurance companies go out of business and several others stop writing conservatorship and guardianship bonds in California. There have been too many claims made and they no longer want to do business in California. The idea that a bond should cover litigation and attorney's fees is wrong. A bond is to cover the actual assets of the estate not an inflated amount. Once the insurance companies find out they are liable for an additional amount above the actual assets of the estate, they may tell their agents, no new business and no additional bonds. They may flat out decline to write the additional bond and stop doing business in California. There are two insurance companies right now that are no longer doing any new or additional bond business in California. If either of those two insurance companies have the current bond for the conservator or guardian, they are out of luck and will not get an additional bond for their matter. Here is another point to consider. As	The committee cannot respond to this comment in detail because it appears to be more properly directed to the Legislature.

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				you may or may not know, each conservator and guardian has signed an indemnity agreement with the insurance company. You probably know that an indemnity agreement states, that if the insurance company pays out on a claim or surcharge they can recover from the conservator or guardian from their personal assets. As soon as the conservator or guardian finds out that they may be liable for litigation and attorney's fees above and beyond the assets of the estate they are managing, they may say no thanks to being the conservator or guardian and asked to be released because they will be personally liable for those extra fees. If we run out of family members, friends and neighbors to be the conservators and guardians, that will place a ton of business on the public conservator's and public guardian's office, which has stated in San Francisco in open court that it is not able to handle the work it has now and is four to six months backed up. Here is another thought. Regarding professional fiduciaries, who have dedicated their lives to the people they care for, this could put them out of business. They are managing tangible assets and are responsible for those assets. They should not be liable for attorney's fees and litigation costs, only the actual loss of estate funds. My last point is to mention the conservatees and	

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				minors who will be hurt the most by the additional bonds. The cost and rise in premiums. Once a few claims are made with this proposal the rates will go up. The conservators and guardians are to be prudent and preserve the assets. Based on your first proposal of $150,000.00 to $180,000.00 the difference in premium is $120.00 a year. Not too bad for one year. But if the case is open for 10 years we have now spent $1,200.00 dollars that could have been invested for a minor's college fund or to take care of a conservatee. Let's think about that first proposal. The actual assets are $150,000.00 and the non-assets or increase is $30,000.00. Thirty thousand—thirty thousand dollars—in litigation and attorney's fees. There are people in this country that don't even make thirty thousand dollars in a year, and you want a conservator or guardian to now be personally liable for $30,000.00 in litigation and attorney's fees. This could be your average family member, neighbor or friend that could be liable for this addition amount. I wouldn't want to be a conservator or guardian under this proposal and neither will the excellent people we now have acting when they find out what the increase in premium is for. I can't wait to get my first call from a very nice client I have bonded for five years and must explain that his premium went up a few hundred dollars and his liability was just increased by 20 percent. This is a win-win	The proposed rule revised in response to comments received would increase the bond in an estate of $150,000 by $15,000, not $30,000.

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				for the attorneys and places a very large target on the backs of the current and new conservators and guardians. The answer is not $30,000.00 dollars for an attorney to go after but to have better qualified conservators and guardians. More emphasis should be placed on the qualifications of the conservator and guardian through classes like they have here in the San Francisco court. Much more emphasis should be placed on the attorney for the conservatee and minor, and many, many more conservators and guardians should be replaced if they are not doing a good job. The court has the power to replace and remove those people not doing a good job. The confidential screening form does not ask enough questions regarding the conservator's or guardian's qualifications to handle or manage money and other assets. The screening form should have a credit report attached to it so the court can see how the proposed conservator or guardian has managed their own money for the last 10 years. I know a lot about credit reports and the court should learn about them and have a copy in the confidential folder. I don't know anything about a background check, but that is a possibility to have in the confidential folder. We need to have better qualified conservators and guardians, not higher premiums and a slush fund for attorneys. You should never have a bond amount higher than the assets. Ever! It would be nice to invite	

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				the insurance companies, the surety association, insurance agents, professional fiduciaries, and the Professional Fiduciaries of California (PFAC), current conservators and guardians and court personal to the next meetings you are having. I have not heard of any meetings in the past and would like to be invited to all the meetings regarding bonds. This may sound bad, but you really need to sit down and speak with those providing the bonds prior to passing the law. It would not be a good situation to pass the law and then have the insurance companies say, NO! You need to get everybody involved and on board to protect the conservatees and minors we are all watching out for. Thank you for you time.	
6.	Ms. Jamie Lamborn Retired Sacramento, California	AM	N	Agree with proposed changes if modified. The bond is a joke. When is the last time a bond company paid off a settlement because a court appointed conservator ran with the money? Yet, by the time the estate is closed, all assets, to include property, is gone! No accounting and the estate paid for all the expenses incurred by the court appointed conservator or guardian. No accountability by the predators responsible for the disbursement of the estate. The beneficiaries are out of luck unless they happen to have big bucks to pay an attorney to go to court and force the court appointed conservator and her attorney	No modifications to this proposal are suggested, therefore the committee cannot respond to the comment.

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				to account for where the money went and the property. The beneficiaries are at the mercy of the court and the probate attorney is having dinner with the probate judge. Not a nice picture. The bond company gets its money and everyone is happy except for the rightful heirs.	
7.	Ms. Keeley C. Luhnow Attorney at Law Albence & Associates La Jolla, California	N	N	Do not agree with proposed changes. This new law is terrible generally and this may be the only way to impose certainty on it, but I don't agree anyway. The amount required to collect on a bond varies from case to case so much that it is too arbitrary to impose something like this.	The committee cannot respond to this comment, which appears to be addressed to the Legislature.
8.	Ms. Jackie A. Miller Executive Director Professional Fiduciary Association of California (PFAC) Sacramento, California	AM	Y	Agree with proposed changes if modified. PFAC strongly recommends to the Judicial Council of California that proposed rule 7.207 be revised as follows: Add new Section (d): A surcharge order is a necessary predicate to collection on the additional bond. Add new Section (e): The premium on the	This issue would be resolved by passage of the proposed amendment of Probate Code section 2320(c) contained in AB 1727. (See above discussion in response to comment of Mr. Lee Back.) This addition should be

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				additional bond is to be paid for from estate funds.	unnecessary. Current law on the source of payment of premiums for these bonds is unchanged and clearly applies to the additional amount of bond. Bond premiums are payable from estate funds as an expense of administration.
9.	Mr. Will Mingram Bond Services of California, LLC Los Angeles, California	N	N	Do not agree with proposed changes. In response to my review of rule 7.207, I want to outline a few issues. First, I am a surety bond agent and have been attending probate court hearings almost every day since 1992. I hold a property/casualty insurance license and have been given underwriting authority of up to $1,500,000.00 and power of attorney by several surety companies. In my analysis, reading, and discussion with others, I would like to identify the problem with the section as I understand it and the problems it could lead to in the future. The most fundamental problem is that the section allows the court to surcharge a bond without actually surcharging the conservator. This in itself goes against what a fiduciary surety bond is and why it is so cheap. A	This problem would be resolved by passage of the proposed amendment of Probate Code section 2320(c) contained in AB 1727. (See above discussion in response to comment

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				fiduciary surety bond is a three-party contract (the principal/conservator, the surety, and the obligee/conservatee). The process of ordering accounting, issuing citations, ordering suspensions and ordering removals is all necessary. It is necessary to review what is produced in this process, where the financial damage is, who caused the damage and then make the appropriate orders. The orders for surcharge need to be applied against the conservator and stipulated to by the surety, and then the damages will be paid. I do not necessarily have any objection to the bond exceeding the amount of the assets for additional damages to be covered but I do have an objection to any change in how the surcharge process is completed. There are other states that actually set bond amounts above asset amounts and we as underwriters will adjust underwriting to make sure the conservators in place qualify adequately protecting the conservatorship, the surety and the process itself. If the judiciary is absolutely dead set on allowing the system to be "shortcut" and giving the judge the authority to surcharge a bond directly, I agree in some parts with the submission provided by HCC Surety that this is a different type of bond and that the additional amount of “coverage” be set forth separately. However, the judiciary should make no mistake	of Mr. Lee Back.) These comments are more properly addressed to the Legislature, which has required the additional bond.

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				and understand that if this is the case, it will cost the public more, be much more difficult to obtain (due to underwriting criteria) and if claims stack up heavily may make the sureties leave the marketplace. Even without this addition to the law, there have been sureties in the past that have exited the marketplace do to surcharges and inability to profit. In my opinion, if the judiciary is going to continue to pursue this legislation as a remedy, I would suggest that the "additional" bond amount be fixed across the board and set out as a separate part of the bond form. For example, no matter what the size the estate is, the additional amount of bond should be $10,000.00 for all cases. It should not cost anymore to pursue a conservator whether the case is large or small. This will make it easier for the court to monitor, easier for the sureties to plan for, and protect against overly aggressive lawyers pursuing conservators because they know there is a large payday available by way of an over-bonded estate. I believe that if the legislation is implemented as proposed, conservatorship bonds will become much too expensive or sureties will be unwilling to issue them. If this happens, conservatorships will become much more labor intensive for the courts and require entirely new monitoring	The committee believes that the attorney's fees and costs of surcharge litigation would tend to increase as the size of the estates subject to the surcharge increase. See the committee's response to the same recommendation from commentator Mary Joy Quinn, below.

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				systems.	
10.	Ms. Colleen O'Hara Asst. Regional Manager International Fidelity Insurance Co. Walnut Creek, California	N	Y	Do not agree with proposed changes. I strongly disagree with the proposed changes. The proposed rule 7.207(b) would require increases for all existing conservator and guardian bonds, to be effective January 1, 2008. As a surety company, we write thousands of probate bonds. The increase requirement for existing bonds would incur unreasonable attorney and court expenses that would have to be paid from the assets of the various estates, not to mention the time involved on everybody's part. Do the courts really have the extra time and personnel to deal with this additional activity? Do the professional fiduciaries? I think not. As a matter of fact, it seems that some courts are not even aware of this new proposal. It would be a virtual accounting nightmare from the standpoint of the surety, resulting in the need for extra manpower to handle the load. At the very least, if an increase in the bond amount is required, it should not be retroactive nor be applicable to existing probate estates. Additionally, proceeds from the bond should not be made available for "frivolous" lawsuits instituted by disgruntled family members or other parties for unfounded claims. The bond is meant to protect the assets of the estate, not deplete it. I highly recommend	The committee agrees with the recommendation contained in this comment, and has revised the proposed rule to provide for a maximum of six months for a guardian or conservator appointed before January 1, 2008, and his or her attorney, to apply for an order increasing the bond to include the additional amount required by this rule, and to post the additional amount of bond.

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				that you take a second look at this and reconsider this proposal very carefully. Thank you.	
11.	Ms. Carol A. Peters Attorney at Law Law Office of Carol A. Peters Pasadena, California	A	N	Agree with proposed changes. Not a fee ceiling? I am gratified that you have quantified the amount of the increased bonds and by a formula. However, I would regret seeing judges interpreting this formula for calculating the bond as a fee ceiling for what the industrious 'white hat' attorney may have earned as a fee in chasing the defalcating bonded fiduciary, or worse, the unbonded, un-court-supervised pre-conservatorship attorney-in-fact who has taken funds, and was not bonded, or registered. So hopefully the judges will be told at judges' school and in their CJER materials that these bond-increase figures are solely for calculating in advance of chase the bond increase formulaically? As a good guess but unrelated (ex: no survey) to the later adventure(s) embarked on by the good-hearted, idealistic, & hopefully well-married attorney chasing the missing assets through probate court, civil court, bankruptcy court and the Court(s) of Appeal, to obtain the surcharge order?	See the committee's response to the comment of Mr. Lee Back, above, in which the committee supports a construction of the statute as amended by AB 1727 that would authorize courts to surcharge guardians and conservators for reasonable fees and costs incurred in seeking the surcharge. The amount of reasonable fees and costs would be based on the facts existing at the time of the surcharge litigation, not the amount of the additional bond required by the rule.

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				Which surcharge order's itemization of loss may exceed the amount of bond, but only the amount of the bond would be paid. Apportionment: Put another way, the legislation is silent on the apportionment issue: how much of the recovery on the increase bond (all of which goes into the conservatee's estate) should go out of the estate as an earned fee to the successfully chasing attorney who got the surcharge order? Potential Policy Conflict? The EADACPA post-death attorney fee statute looks helpful on the books, but in practice, because the nefarious are essentially judgment proof, qualified attorneys with overhead expenses are not being enticed to embark on EADACPA actions. Consequently I foresee a future risk that perceptions of this bond-increase formula as a fee limit will further dampen interest in the "white hat" chase.	The fiduciary is responsible for the full amount of the surcharge. The surety is responsible for the portion unpaid by the fiduciary, up to the amount of the bond. The proposed amendment to Probate Code section 2320(c)(4) in AB 1727, discussed above, would have the fiduciary surcharged for the amount of fees and costs incurred. The surety and the fiduciary, not the estate, would be required to pay this sum to the interested person, covered by the bond, who successfully prosecuted the surcharge litigation. This comment is beyond the scope of this proposal.
12.	Ms. Mary Joy Quinn	N	N, Y	Do not agree with proposed changes.	

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	Director, Probate Superior Court of San Francisco County San Francisco, California			Sliding scale is cumbersome, will result in erroneous computations, and will increase examiner review time. Suggest a flat rate of 10%.	The advisory committee did not initially believe that a proposed flat 10% additional bond for all estates would raise a sufficient amount for anticipated fees and costs involved with smaller and medium-sized estates, but might generate an unnecessarily high amount in larger estates. But in response to concerns about the impact of the cost of the additional bond on smaller estates, the committee revised the rule to provide for an additional bond of 10% of the first $500,000 of property or income subject to the bond, down from 20% of the first $200,000 of value and 12% of the next $300,000. Therefore, this commentator's proposed rate would apply to the smaller estates, those most likely to be administered by unrepresented fiduciaries.
13.	Mr. John S. Rough Owner Bond Services of California, LLC Santa Ana, California	N	Y	Do not agree with proposed changes. Thank you for the Invitation to Comment on rule 7.207. Focusing on the specific concerns noted in your memo, in my opinion the careless language in rule 7.207 could lead to the disqualification of all but the wealthiest bond	

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				applicants, the withdrawal from the market of most sureties and an increase in premiums. As you know, the rule calls for a bond that includes "a reasonable amount for the cost of recovery to collect on the bond…" By the absence of a reference to the principal on the bond (the conservator or guardian), or a reference to an existing surcharge order, the rule implies that the surety is to be primarily liable for such costs. This flies in the face of existing conservator and guardian bonds and all relevant case law. Unlike insurance, a surety has recourse for its losses to the principal. The principal, not the surety, is primarily responsible to fulfill the obligations for which the bond is given. If a surety pays, the principal is liable to reimburse the surety. Jumping over the principal and making demand directly on the surety implies not a bond but an undertaking, a form of guarantee commonly used in civil cases. The rule seems to be calling for a kind of cost "bond." Cost bonds are written for principals based solely on financial strength with collateral being required in many cases. This tends to prevent less well off litigants from pursuing justice, and as a result most cost bonds were thrown out years ago.	This problem would be resolved by passage of the proposed amendment of Probate Code section 2320(c) contained in AB 1727. (See above discussion in response to comment of Mr. Lee Back.) Recourse would still be available from the fiduciary for the portion of the bond amount paid for litigation costs. There would not be a direct demand on surety if the proposed amendment of section 2320 contained in AB 1727 is enacted. The committee notes there is already direct demand on the surety for attorney's fees incurred in efforts to collect on the surcharge in some circumstances under the Bond and Undertaking Law.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				Unlike civil bonds where financial strength is the key consideration, the good character of a fiduciary has always been the primary determinant in probate bonds. Thus a son or daughter of good character and modest means is more likely to be bonded as mom's conservator than a wealthy sibling with a spotty past. It is incorrect to characterize surcharge litigation as a path to recovery on the bond. Rather it is an attempt to call to account an errant fiduciary. Whatever the consequences, those consequences rightly fall first on the conservator or guardian. The statutory bond contract reads "if the said principal shall faithfully execute the duties of the trust according to law, then this obligation shall be void, otherwise to remain in full force and effect." This principle establishes the surety's position behind the fiduciary and helps to establish the surety's right to recovery. What's also troubling about the careless language is the potential financial harm to honest conservators. By its failure to exclude the costs of unsuccessful efforts "to collect on the bond" the rule opens the door to outrageous claims against the personal assets of each and every conservator or guardian. As any beginning probate lawyer knows, the bond does not protect the fiduciary. What sane person	The proposed amendment to section 2320(c)(4) proposed in AB 1727 would limit the surcharge against the fiduciary to the reasonable attorney's fees and costs incurred in *successful* surcharge litigation.

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				would choose to serve as a conservator or guardian when it was known that they would be personally liable for the attorneys fees of some disgruntled relative no matter how ridiculous the pretext for litigation? A possible short term remedy may lie in crafting sufficiently precise and thoughtful orders to be signed prior to the filing of each additional bond. At a minimum this order should require a proper surcharge of the conservator or guardian, with a finding that the fiduciary is liable for costs and a finding that the fiduciary has failed to pay such costs before a demand may be made on the bond. The long-term solution is to rewrite the rule with the proper attention paid to its consequences.	A surcharge order would be made under the proposed amendment of section 2320 contained in AB 1727. The committee believes that revision of the statute is a better long-term solution.
14.	Ms. Mina Sirkin Sirkin and Sirkin Attorneys at Law Woodland Hills, California	N	N	Do not agree with proposed changes. This is nothing more than another way for sureties and surety agents to increase their earnings. The number of surcharge orders does not justify making every bond principal to pay for the potential cost of attorneys fees and costs on each bond. Over 90% of the bonds in LA County are	These comments appear to be more properly addressed to the Legislature. The comments received include

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				written by one surety. This is merely an attempt to increase every bond without justification. The way to do this to charge the bond principals with high risks an additional sum, not all bond principals. For example, if a bond principal has a credit score under xx, then there should be a higher amount, or if the bond principal has had a prior bankruptcy. This proposal seeks to put the burden of the potential costs of surcharge on all bond principals, and is not in any way shape or form connected to the risk incurred by the estate or by the surety. It is time the legislation stops extending favors to a particular surety.	negative comments from the surety referred to by this commentator and several of its agents.
15.	Mr. Peter S. Stern Vice-Chair State Bar Trusts and Estates Section Executive Committee Palo Alto, California	A	Y	Agree with proposed changes. The Executive Committee unanimously approves this proposed rule setting forth standards to add to Probate Code Section 2320 for sums to add to bond. The Executive Committee notes the need to add, perhaps at Probate Code Section 2401(a), language as follows: "The litigation costs incurred in a successful action for surcharge against a fiduciary for breach of duty under this code shall be a surcharge against the conservator or guardian and if unpaid shall be a breach of the condition of the bond." We note that similar language is proposed as Section 16, AB 1727 as	The advisory committee supports the proposed language in AB 1727, interpreted to limit the proposed additional surcharge to reasonable attorney's fees incurred in successful surcharge litigation.

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	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
				amended.	
16.	Ms. Robin C. Westmiller, J.D. President, National Association to Stop Guardian Abuse Thousand Oaks, California	AM	Y	Agree with proposed changes if modified. Under no circumstances shall the amount paid for the bond or the attorneys' fees and costs of recovery on the bond be paid by the conservatee or his or her estate.	The suggested modification would not comply with current statutes.
17.	Mr. Stuart D. Zimring Attorney at Law North Hollywood, California	AM	N	Agree with proposed changes if modified. While I understand the thought process in determining the additional bond amount, the 20 percent requirement for estates under $500,000 seems inordinately high given the presumed amount of loss that could occur and the need for surcharge legislation. As a result, it causes an undue expense on the estate each year which is not in keeping with the intent of the legislation.	The committee agrees with this comment, and has revised the rule to provide an additional bond amount of 10% of the first $500,000 of value of property or income subject to the bond.