

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report Summary**

TO: Members of the Judicial Council

FROM: Probate and Mental Health Advisory Committee  
Hon. Don Edward Green, Chair  
Douglas C. Miller, Committee Counsel, 415-865-7535,  
douglas.miller@jud.ca.gov

DATE: September 15, 2005

SUBJECT: Qualifications and Continuing Education of Private Professional  
Guardians and Conservators (adopt Cal. Rules of Court,  
rules 7.1010 and 7.1060) (Action Required)

Issue Statement

Private professional guardians and conservators must file annual information statements with the courts that appoint them and must register with the Department of Justice's Registry of Private Conservators, Guardians, and Trustees ("Statewide Registry") every three years. The information and registration statements require disclosure of professional fiduciaries' educational background and experience. But there are currently no minimum education or experience qualifications for entering the private fiduciary profession, and no statewide requirements for their continuing education.

In legislation effective January 1, 2005, the Legislature directed the Judicial Council to prescribe by rule, effective January 1, 2006, the qualifications necessary for private professional guardians and conservators, and the yearly number of hours and subject matter of continuing education classes related to the duties of a guardian or conservator that they will be required to complete.<sup>1</sup> Proposed rules 7.1010 and 7.1060 would fulfill the statutory directive.

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<sup>1</sup> Stats. 2004, ch. 625 (Assem. Bill 1155), § 1.

### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, adopt rules 7.1010 and 7.1060 of the California Rules of Court, concerning the qualifications and continuing education required of private professional guardians and conservators.

The text of proposed new rules 7.1010 and 7.1060 is attached at pages 16–37.

A copy of Stats. 2004, ch. 625, § 1 (uncodified) is attached at pages 38–40.

### Rationale for Recommendation

Assembly Bill 1155 requires the Judicial Council to prescribe by rule, effective January 1, 2006, the qualifications and continuing education to be required of private professional guardians and conservators. The statute requires the council, in formulating the rule, to consult with interested parties including the Professional Fiduciary Association of California, the California Bar Association, the National Guardianship Association, and the National Association of Professional Geriatric Care Managers.

The advisory committee established a work group consisting of the members of two of the advisory committee's subcommittees and representatives of the organizations identified in the legislation. All of the listed organizations were represented in the work group. The work group and its staff also consulted with the AOC's Center for Families, Children, and the Courts to bring that division's experience with custody and other children's issues as well as with the continuing education and training of court-connected child custody evaluators and mediators to bear on the development of the proposed rules. The work group completed and reported drafts of proposed new rules 7.1010 and 7.1060 to the advisory committee in January of 2005.

Proposed rule 7.1010 would govern private professional guardians, as they are defined in Probate Code section 2341(b). Rule 7.1060 would apply to private professional conservators defined in section 2341(a). With exceptions noted below, the two rules are identical.

Rule 7.1060 would:

1. Define a private professional conservator subject to the rule.
2. Prescribe initial or foundational education and experience qualifications for private professional conservators effective January 1, 2006. In addition to a minimum age of 21 years, these provisions would establish

- five ways, or tracks, to become eligible for appointment as a private professional conservator (rule 7.1060(b)(2)(A)–(E)).
3. Prohibit appointment of private professional conservators who have committed specified criminal or civil misconduct (rule 7.1060(b)(4)).
  4. Establish a requirement for a minimum of 15 hours of continuing education for private professional conservators every calendar year, commencing on January 1, 2007 (rule 7.1060(e)(1)).
  5. Require a yearly minimum one hour of continuing education on fiduciary ethics and five hours each on subjects appropriate for conservators of the person and conservators of the estate (rule 7.1060(e)(2)).
  6. Establish nonexclusive lists of continuing education subjects appropriate for conservators of the person and conservators of the estate (rule 7.1060(e)(3) (person) and (4) (estate)).
  7. Establish a list of initial authorized providers of continuing education in calendar year 2007, and provide for AOC approval of all such providers after 2007 (rule 7.1060(f)).
  8. Require private professional conservators to demonstrate in their annual information statements filed with appointing courts that they satisfy initial qualifications and have complied with the annual continuing education requirements in the year before the filing (rule 7.1060(h)).
  9. Provide transitional provisions affecting qualifications of professional conservators during 2006 (rule 7.1060(d)).
  10. Require courts to report to the Statewide Registry a private professional conservator's failure to meet initial qualifications or comply with continuing education requirements (rule 7.1060(h)(3)).
  11. Authorize courts to waive the continuing education requirements on the ground of hardship (rule 7.1060(i)).
  12. Permit courts in small counties, with five or fewer active professional guardians or conservators, to appoint a professional who does not satisfy the educational or experience qualification requirements (rule 7.1060(c)).
  13. Require all professional conservators otherwise eligible for appointment to complete an educational program leading to a certificate in professional fiduciary management unless they had been appointed in California in 10 guardianship or conservatorship matters in the 5-year period prior to January 1, 2006 (rule 7.1060(b)(2)(C) and (3)(A)).

The rule concerning private professional guardians, proposed rule 7.1010, would be added to chapter 21, Guardianships, of title 7 of the California Rules of Court. This rule exactly parallels the provisions of the conservatorship rule except that the lists of subjects for continuing education programs in rule 7.1010(d)(3) and (4), particularly those for guardians of the person in paragraph (d)(3), are tailored for guardianships for minors rather than conservatorships for adults; and the entire rule is inapplicable to private professional guardians (as defined in Probate Code section 2341(b)) who are appointed as guardians of the person only.

#### Alternative Actions Considered

The Legislature's directive to the Judicial Council in Assembly Bill 1155 requires the adoption of one or more rules of court, and the structure of Title Seven of the rules requires separate rules for guardians and conservators. Assembly Bill 1155 does not require that the Judicial Council, the AOC, or any other agency approve the education programs mandated by the statute and the proposed rules. The advisory committee believes, however, that an approval process is required to ensure that the required initial and continued education actually improves the performance and professionalism of private professional fiduciaries appointed by the courts.

The advisory committee considered drafting the rules to assign to each appointing court the authority and responsibility for approval of the foundational and continuing education programs that would be required under the rules for private professionals appointed by the court. The committee decided, however, that (1) this would be too great an administrative burden to place on individual courts; and (2) administration of the education component of the rules should be uniform throughout the state.

The advisory committee concluded that the AOC is the only statewide agency that could, by rule of court, be given authority and responsibility for administration of the education component of these proposed rules. The committee also concluded that the AOC's experience with education and training programs for court-connected and private professionals in family and juvenile court matters supports assignment of similar responsibilities to the AOC in this context.

#### Comments From Interested Parties

This proposal was circulated to a standard list of court executives, judicial officers, and organizations and to an augmented list of professional fiduciaries and related organizations; probate practitioners; probate department staff; probate-related legal organizations, including the State Bar Trusts and Estates Section; and the probate-interest sections of many local or regional bar associations. Attached at pages 41–73 is a chart showing the comments received from the public on this proposal and the advisory committee's responses.

Twenty-four comments were received. All the commentators supported the proposed rules; five commentators made no recommendations for changes.

The most frequently made comment was that the foundational qualification requirement of a two-year or four-year college education should be dispensed with, as not predictive of success as a private professional guardian or conservator. Several commentators stated that an experience factor similar to the “10 in 5 rule”—10 appointments as a guardian or conservator in California in the 5 years next preceding the proposed effective date of the rules, January 1, 2006—should be an initial qualification that would permit experienced court-appointed fiduciaries without college degrees to continue in their profession. The advisory committee responded to this comment by revising the proposed rules to add the “10 in 5 rule” as a fifth track—an alternative to the college education and work experience, license, or retired-judicial-officer initial qualification requirements.

In response to the recommendations of three commentators, the advisory committee deleted “pharmacist” from the list of licensees eligible for appointment as a private professional guardian or conservator under proposed rules 7.1010(b)(2)(D) and 7.1060(b)(2)(D).

One commentator recommended that “certified financial planner” and “certified trust and financial advisor” be added to list of authorized licensees. The advisory committee disagrees with this suggestion because those certificates are issued by private business entities, not by a governmental licensing body.

Four commentators recommended that probate paralegals be made eligible for appointment. The advisory committee agrees with this recommendation. It has added provisions, at rule 7.1010(b)(2)(A)(iii) and (B)(iii) and at rule 7.1060(b)(2)(A)(iii) and (B)(iii), that expand the work-experience component of the college degree qualification tracks to include employment as a paralegal principally in probate areas of practice.

#### Implementation Requirements and Costs

Implementation of these proposed rules of court would require administration by the Administrative Office of the Courts of the initial and continuing education components of the rules. The rules provide that the AOC would be responsible for approving the program of education leading to a certificate in fiduciary management. (Rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B).) The AOC must identify and approve at least one appropriate program by the effective date of the rules, January 1, 2006, and develop an approval process for additional programs thereafter.

In years after 2006, the rules would require private professionals to complete continuing education courses annually, beginning in 2007. The rules provide for authorized sources of continuing education without AOC approval during 2007. Beginning on January 1, 2008, however, all continuing education providers and courses must be approved by the AOC. (See rules 7.1010(f) and 7.1060(f).) During 2006 and 2007, the AOC must put in place an approval process for continuing education providers and courses. The experience of the Center for Families, Children & the Courts in the administration of education programs offered by outside providers for court-connected and private child custody evaluators and others will assist this effort.

Many private professional guardians and conservators would incur the one-time expense of tuition for the fiduciary management program. Beginning in 2007, all private professionals subject to the rules would incur the recurring annual cost of the 15 hours of continuing education courses they would be required to complete.

Courts would require additional time and effort to review and, as needed or advisable, audit, the annual statements filed by private professional guardians and conservators to ensure that they have complied with the qualification and educational requirements of the rules; and, if they have not complied, to replace them in active cases and report them to the Statewide Registry. The advisory committee is considering the development of one or more Judicial Council forms to assist the courts in this endeavor. These forms would be used by proposed private professional guardians and conservators to show their qualifications to accept appointments under these rules and, after their appointment, to show their compliance with the continuing education requirements of the rules.

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Hon. Don Edward Green, Chair  
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DATE: September 15, 2005

SUBJECT: Qualifications and Continuing Education of Private Professional Guardians and Conservators (adopt Cal. Rules of Court, rules 7.1010 and 7.1060) (Action Required)

Issue Statement

Private professional guardians and conservators must file annual information statements with the courts that appoint them and must register with the Department of Justice every three years.<sup>2</sup> The information and registration statements require disclosure of professional fiduciaries' educational background and experience. But there are currently no minimum education or experience qualifications for entering the private fiduciary profession, and no statewide requirements for their continuing education.<sup>3</sup>

In legislation effective January 1, 2005, the Legislature directed the Judicial Council to prescribe by rule effective January 1, 2006 the qualifications necessary for private professional guardians and conservators, and the yearly number of

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<sup>2</sup> See Probate Code sections 2340–2344 (information statements) and 2850–2855 (registration with the Department of Justice).

<sup>3</sup> The Superior Court of San Francisco County recently adopted a local rule requiring prior experience or completion of a course leading to a certificate in fiduciary management for appointment as a private professional conservator in San Francisco, and imposing continuing education requirements on professional conservators after their appointment. See Superior Court, San Francisco County Local Rules, rule 14.105B2a and b.

hours and subject matter of continuing education classes related to the duties of a guardian or conservator that private professionals would be required to complete.

### Background

Assembly Bill 1155 requires the Judicial Council to prescribe by rule, effective January 1, 2006, the qualifications and continuing education that will be required of private professional guardians and conservators. The statute requires the council, in formulating the rule, to consult with interested parties, including the Professional Fiduciary Association of California, the California Bar Association, the National Guardianship Association, and the National Association of Professional Geriatric Care Managers.

### *Judicial Council Workgroup on AB 1155*

The advisory committee assigned this project to its Elder Law and Incapacity and Guardianships Subcommittees. The subcommittees and staff contacted the organizations identified in the statute and requested that each designate one or more representatives to participate in a working group consisting of the members of the subcommittees and the designated representatives—referred to as the “Judicial Council Workgroup on AB 1155.” Each of the organizations responded and all of them contributed one or more participants to the workgroup.<sup>4</sup>

The workgroup met in person and by teleconference. Its members and staff also communicated frequently to exchange ideas and work on draft revisions of the two rules here proposed. The workgroup presented its drafts of proposed new rules 7.1010 and 7.1060 to the advisory committee on January 21, 2005.

### *CFCC*

Workgroup staff frequently met with and provided drafts of the proposed guardianship rule to staff attorneys and others in the AOC’s Center for Families, Children, & the Courts (CFCC). This close consultation was essential for this project because of CFCC’s experience with juvenile dependency and child custody matters generally and with continuing education and training programs for child custody mediators and evaluators specifically.<sup>5</sup> CFCC’s many suggestions and comments were very helpful and are very much appreciated by the members of the work group, the advisory committee, and staff.

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<sup>4</sup> The Professional Fiduciary Association of California was represented in the working group by Ms. Sandy Carey, Ms. Jane Lorenz and Mr. Daniel G. Stubbs; the California Bar Association by Ms. Tracy Potts; the National Guardianship Association by Ms. Sally Hurme; and the National Association of Professional Geriatric Care Managers by Ms. Bunni Dybnis and Ms. Erica Karp.

<sup>5</sup> See, e.g., Cal. Rules of Court, rules 5.225 and 5.230. The education and training described in these rules is given or supervised within the AOC by CFCC.

## Proposed Rules

### *Rule 7.1060*

Rule 7.1060 would be added to chapter 22, Conservatorships, of title 7 of the California Rules of Court.<sup>6</sup> The proposed rule would:

1. Define a private professional conservator subject to the rule by reference to the definition provided in Probate Code section 2341(a), including a person who has been appointed as conservator of only one unrelated person but has been required by the appointing court to comply with the local-filing requirements. (See Prob. Code, § 2341(a); rule 7.1060(a)(6).)
2. Prescribe initial or foundational education and experience qualifications for private professional conservators effective January 1, 2006 (rule 7.1060(b)). In addition to a minimum age of 21 years, these provisions would establish five ways, or tracks, to become eligible for appointment as a private professional conservator. (Rule 7.1060(b)(2)(A)–(E).) The five tracks are:
  - a. A four-year undergraduate degree or equivalent (any field), plus two or more years of relevant employment experience in (1) a position with responsibility for the care or management of children or the persons or estates of dependent or developmentally disabled adults, (2) in a court-appointed position as a guardian or conservator under the law of any state, or (3) as a paralegal in a probate-related area of practice (and possession of a paralegal certificate) (rule 7.1060(b)(2)(A));
  - b. A two-year undergraduate degree or equivalent, in specified fields,<sup>7</sup> plus five years relevant employment or fiduciary experience (rule 7.1060(b)(2)(B));
  - c. Appointment as a guardian of the person and estate or the estate, or as a conservator of the person, the estate, or both, in 10 matters in California during the 5-year period next preceding January 1, 2006 (rule 7.1060(b)(2)(C));

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<sup>6</sup> The higher-numbered rule applicable to professional conservators is discussed before rule 7.1010 concerning professional guardians because the advisory committee understands that there are currently many more local filings and statewide registrations by professional conservators than by guardians. The committee expects that this disparity will continue after adoption of the proposed rules.

<sup>7</sup> The two-year degree must be in a behavioral science, business, nursing, or accounting.

- d. A current or recently (within 5 years) inactive California license in eight fields (rule 7.1060(b)(2)(D));<sup>8</sup> or
  - e. Retired judge or justice, or retired full-time commissioner or juvenile court referee, of a California trial or appellate court (rule 7.1060(b)(2)(E)).
3. Prohibit appointment of private professional conservators who have committed specified criminal or civil misconduct (rule 7.1060(b)(4)).
  4. Establish a requirement for a minimum of 15 hours of continuing education for private professional conservators every calendar year, commencing on January 1, 2007. A private professional who is both a guardian and a conservator could satisfy the requirement under the guardianship and conservatorship rules by completing a total of 15 hours (rule 7.1060(e)(1) and (5)).
  5. Require a minimum one hour each year of continuing education on fiduciary ethics, and five hours each on subjects appropriate for conservators of the person and conservators of the estate. The 5-hour minimums would apply to all professional conservators subject to the rule, whether or not they are appointed in both capacities in any conservatorship (rule 7.1060(e)(2)).
  6. Establish nonexclusive lists of continuing education subjects appropriate for conservators of the person and conservators of the estate (rule 7.1060(e)(3) (person) and (4) (estate)).
  7. Establish a list of initial authorized providers of continuing education in calendar year 2007, and provide for AOC approval of all such providers after 2007 (rule 7.1060(f)).
  8. Require private professional conservators to demonstrate in their annual information statements filed with appointing courts that they satisfy initial qualifications and have complied with the annual continuing education requirements in the year before the filing (rule 7.1060(h)).
  9. Provide transitional provisions affecting qualifications of professional conservators during 2006 (rule 7.1060(d)).<sup>9</sup>
  10. Require courts to report to the Statewide Registry a private professional conservator's failure to meet initial qualifications or comply with continuing education requirements, in the same way they report other

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<sup>8</sup> The qualified licensees are (1) attorney at law, (2) certified public accountant, (3) educational psychologist, (4) licensed clinical social worker, (5) marriage and family therapist, (6) physician or surgeon, (7) psychologist, and (8) registered nurse.

<sup>9</sup> See the following discussion.

fiduciary misconduct under Probate Code section 2850(d) (rule 7.1060(h)(3)).

11. Authorize courts to waive the continuing education requirements on the ground of hardship (rule 7.1060(i));
12. Permit courts in small counties, with five or fewer active professional guardians or conservators, to appoint a professional who does not satisfy the educational or experience qualification requirements (rule 7.1060(c)).
13. Require all professional conservators otherwise eligible for appointment to complete an educational program leading to a certificate in professional fiduciary management unless they had been appointed in California in 10 guardianship or conservatorship matters in the 5-year period prior to January 1, 2006 (rule 7.1060(b)(2)(C) and (3)(A)). This program is modeled after the California State University, Fullerton program leading to a certificate in fiduciary management for conservators, required of less experienced professional conservators under San Francisco's recently enacted local rule.<sup>10</sup>

The 2006 transitional provisions in rule 7.1060(d), noted above, are as follows:

1. The court would have discretion to appoint, on conditions satisfactory to the court, a conservator who does not meet the 10 appointments in 5 years standard on January 1, 2006 (but qualifies under one of the other qualification tracks) if he or she completes the certificate program by the end of that year.
2. The court would have discretion to permit a conservator appointed before January 1, 2006, who on that date does not qualify under any of the five qualification tracks outlined above, to continue as conservator after that date (but not to take on new matters) on conditions set by the court. The conservator could thereafter apply for removal of the conditions (and become eligible for new appointments) when he or she qualified under one of the initial qualification tracks and completed the certificate program.

#### *Rule 7.1010*

The rule concerning private professional guardians, proposed rule 7.1010, would be added to chapter 21, Guardianships, of title 7 of the California Rules of Court. This rule exactly parallels the provisions of the conservatorship rule except that the lists of subjects for continuing education programs in rule 7.1010(d)(3) and

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<sup>10</sup> See Superior Court, San Francisco County Local Rules, rule 14.105B2a(1).

(4), particularly those for guardians of the person in paragraph (d)(3), are tailored for guardianships for minors rather than conservatorships for adults; and the entire rule is inapplicable to private professional guardians (as defined in Probate Code section 2341(b)) who are appointed as guardians of the person only.<sup>11</sup> See rule 7.1010(j), an express exemption from the entire rule for such guardians, and rule 7.1010(b), which makes the qualification requirements expressly applicable only to private professional guardians of the estate or the person and estate.<sup>12</sup>

#### Alternative Actions Considered

The Legislature's directive to the Judicial Council in Assembly Bill 1155 requires the adoption of one or more rules of court, and the structure of Title Seven of the rules requires separate rules for guardians and conservators. Assembly Bill 1155 does not require that the Judicial Council, the AOC, or any other agency approve the education programs mandated by the statute and the proposed rules. The advisory committee believes, however, that an approval process is required to ensure that the required initial and continued education actually improves the performance and professionalism of private professional fiduciaries appointed by the courts.

The advisory committee considered drafting the rules to assign to each appointing court the authority and responsibility for approval of the foundational and continuing education programs that would be required under the rules for private professionals appointed by the court. The committee decided, however, that (1) this would be too great an administrative burden to place on individual courts; and (2) administration of the education component of the rules should be uniform throughout the state.

The advisory committee concluded that the AOC is the only statewide agency that could, by rule of court, be given authority and responsibility for administration of

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<sup>11</sup> An exemption from compliance with the rule for such guardians is authorized by Assembly Bill 1155. (See section 1(c) of the uncodified portion of the legislation, attached to this report at pages 36–38.) As of this writing, there is a bill currently pending in the Legislature that would exclude guardians of the person entirely from the definition of a private professional guardian in Probate Code section 2341(b) for purposes of the local-filing requirement and therefore, by incorporation, from the requirement to register with the Statewide Registry under Probate Code section 2850(b), subject to the court's discretion to require the local filing. (Assem. Bill 541 (Harman), introduced on February 16, 2005.) This bill has passed the Assembly and the Senate, and is now back in the Assembly for its concurrence with Senate amendments.

<sup>12</sup> Banks or other entities authorized to do business as trust companies, which are often appointed as guardians or conservators of the estate, remain excluded from the provisions of rules 7.1010 and 7.1060 because they are excluded from the definition of a private professional guardian or a private professional conservator in Probate Code section 2341.

the education component of these proposed rules.<sup>13</sup> The committee also concluded that the AOC's experience with education and training programs for court-connected and private professionals in family and juvenile court matters supports assignment of similar responsibilities to the AOC in this context.

#### Comments From Interested Parties

This proposal was circulated to a standard list of court executives, judicial officers, and organizations and also to an augmented list of professional fiduciaries and related organizations; probate practitioners; probate department staff; probate-related legal organizations, including the State Bar Trusts and Estates Section; and probate-interest sections of many local or regional bar associations. Attached at pages 41–73 is a chart showing the comments received from the public on this proposal and the advisory committee's responses.

Twenty four comments were received. All the commentators supported the proposed rules; five commentators made no recommendations for changes.

By far, the most frequently made comment was that the foundational qualification requirement of a two-year or four-year college education should be dispensed with because it is not predictive of success as a private professional guardian or conservator. Eleven commentators made this point. Ten of them are attorneys practicing in San Diego, who apparently made the comments in support of one or more professional fiduciaries without college educations who are active and doing well in that county. Several of these commentators stated that an experience factor similar to the "10 in 5 rule"—10 appointments as a guardian or conservator in California in the 5 years next preceding the proposed effective date of the rules, January 1, 2006—should be an initial qualification that would permit experienced court-appointed fiduciaries without college degrees to continue in their profession.

The advisory committee responded to this comment by revising the proposed rules to add the "10 in 5 rule" as an alternative to the college education and work experience, license, and retired-judicial-officer initial qualification tracks. The college education and work-experience requirements would be retained, however, for future candidates for appointment as private professionals who do not qualify under one of the other tracks or do not have the required pre-2006 experience.

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<sup>13</sup> The only other statewide agency that could assume this responsibility is the California Department of Justice, as part of its duty to maintain the Statewide Registry. The Department of Justice maintains the registry as an information resource for courts and for the public, but does not actively supervise the performance of private professional fiduciaries appointed by courts; the department is not a licensing agency. Moreover, the committee believes that legislation would be required to impose additional administrative responsibilities on the Department of Justice.

Three commentators recommended that “pharmacist” be eliminated from the list of licensees eligible for appointment as a private professional guardian or conservator. The advisory committee agrees with this suggestion; “pharmacist” has been deleted from rules 7.1010(b)(2)(D) and 7.1060(b)(2)(D). Knowledge of medications might be useful, but most professional fiduciaries, including pharmacists, would be expected to rely on physicians and other health care providers for advice on medical issues, including prescribed medicines.

One commentator, a private professional fiduciary from La Mesa (San Diego County) California, recommended that “certified financial planner” and “certified trust and financial advisor” be added to list of authorized licensees. The advisory committee disagrees with this suggestion because those certificates are issued by private business entities, not by a governmental licensing body. Their addition would bring the private organizations’ disciplinary systems into these rules, creating an administrative burden for the appointing courts.

Four commentators recommended that paralegals with probate experience be made eligible for appointment. The advisory committee agrees with this recommendation. It has added provisions, at rule 7.1010(b)(2)(A)(iii) and (B)(iii), and at rule 7.1060(b)(2)(A)(iii) and (B)(iii), that expand the work-experience component of the college degree qualification track to include employment as a paralegal principally in probate areas of practice.

#### Implementation Requirements and Costs

Implementation of these proposed rules of court would require administration by the Administrative Office of the Courts of the initial and continuing education components of the rules. The rules provide that the AOC would be responsible for approving the program of education leading to a certificate in fiduciary management. (Rules 7.1010(b)(3)(B) and 7.1060(b)(3)(B).) The AOC must identify and approve at least one appropriate program by the effective date of the rules, January 1, 2006, and develop an approval process for additional programs thereafter.

In years after 2006, the rules would require private professionals to complete continuing education courses annually, beginning in 2007. The rules provide for authorized sources of continuing education without AOC approval during 2007. Beginning on January 1, 2008, however, all continuing education providers and courses must be approved by the AOC. (See rules 7.1010(f) and 7.1060(f).) During 2006 and 2007, the AOC must put in place an approval process for continuing education providers and courses. The experience of the Center for Families, Children & the Courts in the administration of education programs offered by outside providers for court-connected and private child custody evaluators and others will assist this effort.

Many private professional guardians and conservators would incur the one-time expense of tuition for the fiduciary management program. Beginning in 2007, all private professionals subject to the rules would incur the recurring annual cost of the 15 hours of continuing education courses they would be required to complete.

Courts would require additional time and effort to review and, as needed or advisable, audit, the annual statements filed by private professional guardians and conservators to ensure that they have complied with the qualification and educational requirements of the rules; and, if they have not complied, to replace them in active cases and report them to the Statewide Registry. The advisory committee is considering the development of one or more Judicial Council forms to assist the courts in this endeavor. These forms would be used by proposed private professional guardians and conservators to show their qualifications to accept appointments under these rules and, after their appointment, to show their compliance with the continuing education requirements of the rules.

#### Recommendation

The Probate and Mental Health Advisory Committee recommends that the Judicial Council, effective January 1, 2006, adopt California Rules of Court, rules 7.1010 and 7.1060, concerning the qualifications and continuing education required of private professional guardians and conservators.

Copies of the proposed new rules 7.1010 and 7.1060 are attached at pages 16–37.

A copy of section 1 of Stats. 2004, ch. 625 (Assem. Bill 1155) (uncodified) is attached at pages 38–40.

Attachments

Rules 7.1010 and 7.1060 of the California Rules of Court are adopted, effective January 1, 2006, to read:

1 **Rule 7.1010. Qualifications and continuing education requirements for private**  
2 **professional guardians**  
3

4 **(a) [Definitions]** For purposes of this rule:  
5

- 6 (1) An “accredited educational institution” is a college or university,  
7 including a community or junior college, accredited by a regional  
8 accrediting organization recognized by the Council for Higher Education  
9 Accreditation.
- 10  
11 (2) The term “developmental disability” has the meaning specified in Probate  
12 Code section 1420.
- 13  
14 (3) Unless the context otherwise requires, the term “guardian” refers to a  
15 guardian of the person, of the estate, or of both, appointed by a court in a  
16 guardianship proceeding under Division 4 of the Probate Code  
17 (commencing with section 1400).
- 18  
19 (4) A “Lanterman-Petris-Short conservatorship” is a conservatorship of a  
20 person who is gravely disabled as the result of a mental disorder or  
21 impairment by chronic alcoholism under Welfare and Institutions Code  
22 section 5350 et seq.
- 23  
24 (5) The term “private professional guardian” has the meaning specified in  
25 Probate Code section 2341(b), including a guardian of one unrelated  
26 minor whom an appointing court has required to comply with article 4 of  
27 chapter 4 of part 4 of division 4 of that code (commencing with section  
28 2340).
- 29  
30 (6) An “unrelated minor” is a person under the age of majority who is not  
31 related to a private professional guardian by blood, marriage, or domestic  
32 partnership.

1 (b) **[Qualifications for appointment]** Except as otherwise provided in this rule,  
2 effective January 1, 2006, a court may not appoint a private professional  
3 guardian as guardian of the estate or guardian of the person and estate of an  
4 unrelated minor unless on the date of the order of appointment, the private  
5 professional guardian:

6  
7 (1) Is at least 21 years of age;

8  
9 (2) Satisfies one or more of the following subparagraphs:

10  
11 (A) Has a four-year undergraduate degree or equivalent from an  
12 accredited educational institution and one of the following:

13  
14 (i) Two or more years' employment experience in a position with  
15 responsibility for the care or management of the persons or  
16 estates of children or dependent, developmentally disabled, or  
17 mentally ill adults, or supervision of those caring for or  
18 assisting them, (1) in a nonprofit corporation or public agency  
19 of the federal government or any state, city, or county; (2) in a  
20 bank or corporation authorized under the law of any state to  
21 engage in the business of a trust company; or (3) in a nonprofit  
22 corporation or with a professional fiduciary or organization of  
23 professional fiduciaries acting as a court-appointed fiduciary  
24 under the law of any state;

25  
26 (ii) Two or more years' experience as a court-appointed, qualified,  
27 and acting guardian or conservator of the person or estate of a  
28 minor or an adult under the law of any state; or

29  
30 (iii) A certificate as a paralegal from an accredited educational  
31 institution and two or more years' employment experience as a  
32 paralegal with a primary emphasis in probate-related areas of  
33 practice.

34  
35 (B) Has a two-year undergraduate degree or equivalent in a behavioral  
36 science, business, nursing, or accounting from an accredited  
37 educational institution and one of the following:

38  
39 (i) Five or more years' employment experience in a position and  
40 with an entity or individual described in (A)(i);

41

1                   (ii) Five or more years' experience as a court-appointed, qualified,  
2                   and acting guardian or conservator of the person or estate of a  
3                   minor or an adult under the law of any state; or

4  
5                   (iii) A certificate as a paralegal from an accredited educational  
6                   institution and five or more years' employment experience as a  
7                   paralegal with a primary emphasis in probate-related areas of  
8                   practice;

9  
10                  (C) Has been appointed, qualified, and acted as guardian of the estate or  
11                  of the person and estate, or as conservator of the person, of the  
12                  estate, or of both, of 10 or more persons in the state of California in  
13                  the five-year period immediately preceding January 1, 2006;

14  
15                  (D) Has a current, active license in good standing, or an inactive license  
16                  that was current, active, and in good standing within five years of  
17                  the later of the effective date of this rule or the date of appointment  
18                  as a private professional guardian and was neither revoked, nor  
19                  resigned or surrendered with proceedings for revocation pending, to  
20                  practice one of the following professions in the State of California:

21  
22                   (i) Attorney at law,

23  
24                   (ii) Certified public accountant,

25  
26                   (iii) Educational psychologist,

27  
28                   (iv) Licensed clinical social worker,

29  
30                   (v) Marriage and family therapist,

31  
32                   (vi) Physician or surgeon,

33  
34                   (vii) Psychologist, or

35  
36                   (viii) Registered nurse; or

37  
38                  (E) Is one of the following retired judicial officers of a California trial or  
39                  appellate court:

40  
41                   (i) A judge or justice of a trial or appellate court, or

1                   (ii) A commissioner or juvenile court referee who was employed  
2                   by a court in that capacity on a full-time basis at the time of his  
3                   or her retirement;

4  
5           (3) Has either:

6  
7                   (A) Satisfied the requirements of (2)(C), or

8  
9                   (B) Successfully completed a program of education approved by the  
10                  Administrative Office of the Courts and received a certificate or its  
11                  equivalent in professional fiduciary management for guardians or  
12                  conservators; and

13  
14           (4) Has not:

15  
16                  (A) Been convicted of any felony, or of a misdemeanor involving abuse  
17                  or neglect of a child or an elderly or dependent adult;

18  
19                  (B) Been determined to be liable in a civil action or proceeding for  
20                  conversion, embezzlement, fraud, misappropriation,  
21                  misrepresentation, or theft; or

22  
23                  (C) Been removed as a fiduciary by a court for actions involving breach  
24                  of fiduciary duty, conversion, fraud, misappropriation,  
25                  misrepresentation, or theft.

26  
27   **(c) [Discretionary exception for small counties]**

28  
29           (1) Notwithstanding any other provision of this rule, a court in a county that  
30           has five or fewer private professional guardians or conservators, as  
31           determined under (2), who have been appointed as a private professional  
32           fiduciary in at least one guardianship or conservatorship matter that is  
33           then open and active in that court may, in the exercise of the court's  
34           discretion, appoint a private professional guardian who does not meet any  
35           of the requirements of (b)(2) and (3) on conditions satisfactory to the  
36           court, if the court determines that it is necessary to appoint a private  
37           professional guardian in a particular case.

38  
39           (2) The court must determine the number of private professional guardians or  
40           conservators active in its county at the time of the proposed discretionary  
41           appointment authorized under (1) by checking the latest annual  
42           information statements required by Probate Code section 2342 that are on  
43           file with the court as of the date of the proposed appointment, and

1 reviewing the guardianship or conservatorship matters listed in the  
2 statements to confirm their status as open and active on that date.

3  
4 **(d) [Transitional provisions for qualifications]**

5  
6 (1) (Completion of education requirements in 2006)

7  
8 (A) During 2006, the court may, in the exercise of its discretion, appoint  
9 as guardian of the estate, or of the person and estate, of an unrelated  
10 minor a private professional guardian who does not satisfy the prior  
11 experience requirement of (b)(2)(C) or the education requirement of  
12 (b)(3)(B) on the date of appointment.

13  
14 (B) A private professional guardian appointed under (A) must complete  
15 the education requirement of (b)(3)(B) and provide a certificate or  
16 other proof of completion satisfactory to the court before January 1,  
17 2007.

18  
19 (C) The court must remove a private professional guardian appointed  
20 under (A) who fails to timely comply with (B).

21  
22 (2) (Guardianships pending on January 1, 2006)

23  
24 (A) The court may, in the exercise of its discretion, permit a private  
25 professional guardian who was appointed and qualified as a  
26 guardian of the estate, or the person and estate, of an unrelated  
27 minor before January 1, 2006, to continue as guardian after that date  
28 on conditions approved by the court, although the guardian does not  
29 on that date satisfy the qualifications specified in (b)(2)(A)—(E).

30  
31 (B) A private professional guardian permitted to continue as guardian  
32 under (A) may apply to the court for removal of any conditions  
33 imposed by the court at any time after January 1, 2006 that he or she  
34 becomes qualified under (b)(2)(A), (B), or (D) and satisfies the  
35 education requirement of (b)(3)(B).

36  
37 **(e) [Continuing education]**

38  
39 (1) (Annual time requirements) Beginning on January 1, 2007, except as  
40 provided in (i) and (j), every private professional guardian must complete  
41 during each calendar year a minimum of 15 hours of continuing education  
42 from eligible providers under this rule.

1 (A) A maximum of 4 of the 15 hours required by this paragraph may be  
2 by self-study under the supervision of an eligible continuing  
3 education provider that provides evidence of completion.  
4

5 (B) A private professional guardian may complete continuing education  
6 courses that satisfy the requirements of this subdivision offered by  
7 eligible continuing education providers by means of video  
8 presentations or other delivery means at remote locations. Such  
9 courses are not self-study within the meaning of this rule.  
10

11 (C) A private professional guardian who serves as an instructor in a  
12 continuing education course that satisfies the requirements of this  
13 rule may receive 1.5 hours of course participation credit for each  
14 hour of course instruction.  
15

16 (2) (Annual subject matter requirements)  
17

18 (A) At least 5 hours of continuing education each year must be in  
19 subjects appropriate for a guardian of the person.  
20

21 (B) At least 5 hours of continuing education each year must be in  
22 subjects appropriate for a guardian of the estate.  
23

24 (C) At least 1 hour of continuing education each year must be in  
25 fiduciary ethics.  
26

27 (3) (Subject matter for guardians of the person) “Subjects appropriate for a  
28 guardian of the person” under (2) include the following:  
29

30 (A) Assessment of child abuse issues;  
31

32 (B) Child custody and visitation issues in guardianships;  
33

34 (C) Community resources;  
35

36 (D) Developmental disabilities;  
37

38 (E) Interfamilial relationships and conflict resolution, with emphases on  
39 parent-child relationships and on blended and extended families;  
40

41 (F) Interstate issues in guardianships of the person of minors;  
42

1 (G) Involuntary mental health evaluation and additional treatment for  
2 mentally ill children;

3  
4 (H) Lanterman-Petris-Short conservatorships;

5  
6 (I) Mandatory reporting requirements for child abuse;

7  
8 (J) Medical decision making by guardians;

9  
10 (K) Minors' rights to mental health treatment or counseling services;

11  
12 (L) Probate Code and other California legal requirements for  
13 guardianships of the person;

14  
15 (M) Psychological and developmental needs of children;

16  
17 (N) Recognizing and evaluating mental illnesses in children; and

18  
19 (O) Significance of culture and religion in the lives of children.

20  
21 (4) (Subject matter for guardians of the estate) "Subjects appropriate for a  
22 guardian of the estate" under (2) include the following:

23  
24 (A) Asset recovery;

25  
26 (B) Court accounting;

27  
28 (C) Economics of fiduciary services;

29  
30 (D) Enforcing a child's right to support;

31  
32 (E) Evaluation of investment securities;

33  
34 (F) Fiduciary liability;

35  
36 (G) Fiduciary office management and technology;

37  
38 (H) Income taxation;

39  
40 (I) Interstate issues in guardianships of the estate of minor children;

41  
42 (J) Investment and other advisors for fiduciaries;

43

- 1           (K) Liability insurance;  
2  
3           (L) Litigation by and against guardians;  
4  
5           (M) Medi-Cal, Supplemental Security Income, and other public benefits;  
6  
7           (N) Medical insurance;  
8  
9           (O) Personal property asset management;  
10  
11          (P) Probate Code and other California legal requirements for probate  
12             guardianships of the estate;  
13  
14          (Q) Prudent Investor Act and authorized investments by guardians;  
15  
16          (R) Real property asset management;  
17  
18          (S) Recordkeeping;  
19  
20          (T) Risk management;  
21  
22          (U) Settlement of the claim or disposition of the proceeds of a judgment  
23             for a minor;  
24  
25          (V) Special needs trusts; and  
26  
27          (W) Any subject not listed in this paragraph that is identified as  
28             appropriate for a conservator of the estate in rule 7.1060(d)(4).

29  
30       (5) *(Continuing education for dual-status private professional fiduciaries)*  
31       Notwithstanding any other provision of this rule and rule 7.1060, a  
32       private professional guardian under this rule who also is a private  
33       professional conservator under rule 7.1060 may satisfy the minimum-  
34       hours requirements of both rules by completing a total of at least 15 hours  
35       of continuing education annually from eligible providers under either  
36       rule.

37  
38       **(f) [Approved eligible continuing education providers]**

39  
40       (1) Eligible continuing education providers may include accredited education  
41       institutions, professional associations, professional continuing education  
42       groups, public or private for-profit or not-for-profit groups, and court-  
43       connected groups.

1  
2 (2) Effective January 1, 2008, continuing education providers and courses  
3 must be approved by the Administrative Office of the Courts.

4  
5 (3) Continuing education completed in calendar 2007 complies with the  
6 requirements of this rule if it addresses the subjects required by this rule,  
7 is certified for continuing education credit by the provider in accordance  
8 with the requirements of subdivision (g), and is provided by:

9  
10 (A) An accredited educational institution;

11  
12 (B) An accountancy organization or a private education provider, if the  
13 education qualifies with the California State Board of Accountancy  
14 for continuing education credit for renewal of an individual license  
15 as a Certified Public Accountant;

16  
17 (C) The Administrative Office of the Courts;

18  
19 (D) The American Bar Association;

20  
21 (E) California Continuing Education of the Bar;

22  
23 (F) A local bar association or private education provider, if the  
24 education qualifies with the California State Bar for continuing legal  
25 education credit for a member of the California bar;

26  
27 (G) The National Association of Social Workers;

28  
29 (H) The National Guardianship Association; or

30  
31 (I) The Professional Fiduciary Association of California.

32  
33 **(g) [Requirements for continuing education providers]** Each continuing  
34 education provider must:

35  
36 (1) Ensure that the instructors teaching continuing education courses are  
37 qualified to teach the subject matter of the courses they teach;

38  
39 (2) Monitor and evaluate the quality of courses, curricula, instructors, and  
40 instructor training;

41  
42 (3) Keep records of attendance or self-study and distribute to each participant  
43 a certificate of completion that identifies the education provider and

1 documents the subject taught, the number of hours of education offered,  
2 and the number of hours the participant completed; and

3  
4 (4) Be approved under (f)(2).

5  
6 **(h) [Proof of compliance]**

7  
8 (1) (Qualifications) Every private professional guardian must demonstrate,  
9 under penalty of perjury, his or her qualifications under (b) in his or her  
10 information statement filed with the clerk of each appointing court under  
11 Probate Code section 2342, beginning with the first statement filed after  
12 the effective date of this rule and annually thereafter.

13  
14 (2) (Continuing education)

15  
16 (A) Every private professional guardian must declare, under penalty of  
17 perjury, that he or she has complied with the continuing education  
18 requirements under (e) for the previous calendar year in his or her  
19 annual statement filed with the clerk of each appointing court under  
20 Probate Code section 2342, beginning with the first statement filed  
21 after December 31, 2007, and annually thereafter.

22  
23 (B) Every private professional guardian must retain certificates of  
24 attendance or other proof of participation in continuing education  
25 required by this rule for a period of three years after the end of each  
26 year of education completed. An appointing court may require a  
27 private professional guardian to produce, in a manner determined by  
28 the court, proof of compliance with the requirement for any year at  
29 any time within that three-year period.

30  
31 (3) (Report of noncompliance to the Statewide Registry) If an appointing  
32 court determines that a private professional guardian has failed to comply  
33 with the qualification or continuing education requirements of this rule,  
34 the court clerk must forward a copy of the court's determination to the  
35 Statewide Registry under Probate Code section 2850(d).

36  
37 (i) **[Waiver of continuing education]** Notwithstanding any other provision of  
38 this rule, a court may, on the ground of hardship, waive the continuing  
39 education requirements of (e), in whole or in part and under conditions  
40 satisfactory to the court, for any private professional guardian appointed by the  
41 court.

1        **(j) [Exemption of guardians of the person]** Notwithstanding any other  
2        provision of this rule, a private professional guardian of the person only of two  
3        or more unrelated minors is exempt from the requirements of this rule.  
4

1 **Rule 7.1060. Qualifications and continuing education requirements for private**  
2 **professional conservators**

3  
4 **(a) [Definitions]** For purposes of this rule:

- 5  
6 (1) An “accredited educational institution” is a college or university,  
7 including a community or junior college, accredited by a regional  
8 accrediting organization recognized by the Council for Higher Education  
9 Accreditation.
- 10  
11 (2) Unless the context otherwise requires, the term “conservator” refers to a  
12 conservator of the person, of the estate, or of both, appointed by a court in  
13 a conservatorship proceeding under division 4 of the Probate Code  
14 (commencing with section 1400).
- 15  
16 (3) The term “developmental disability” has the meaning specified in Probate  
17 Code section 1420.
- 18  
19 (4) A “Lanterman-Petris-Short conservatorship” is a conservatorship of a  
20 person who is gravely disabled as the result of a mental disorder or  
21 impairment by chronic alcoholism under Welfare and Institutions Code  
22 section 5350 et seq.
- 23  
24 (5) A “limited conservatorship” is a conservatorship of a developmentally  
25 disabled adult found by the court to lack the capacity to perform some but  
26 not all of the tasks necessary to provide for his or her own personal needs  
27 for physical health, food, clothing, or shelter, or manage his or her own  
28 financial resources.
- 29  
30 (6) The term “private professional conservator” has the meaning specified in  
31 Probate Code section 2341(a), including a conservator of one unrelated  
32 person whom an appointing court has required to comply with article 4 of  
33 chapter 4 of part 4 of division 4 of that code (commencing with section  
34 2340).
- 35  
36 (7) An “unrelated person” is a person who is not related to a private  
37 professional conservator by blood, marriage, or domestic partnership.

38  
39 **(b) [Qualifications for appointment]** Except as otherwise provided in this rule,  
40 effective January 1, 2006, a court may not appoint a private professional  
41 conservator as conservator of an unrelated person unless on the date of the  
42 order of appointment the private professional conservator:  
43

1           (1) Is at least 21 years of age;

2  
3           (2) Satisfies one or more of the following subparagraphs:

4  
5           (A) Has a four-year undergraduate degree or equivalent from an  
6           accredited educational institution and one of the following:

7  
8           (i) Two or more years' employment experience in a position with  
9           responsibility for the care or management of the persons or  
10           estates of children or dependent, developmentally disabled, or  
11           mentally ill adults, or supervision of those caring for or  
12           assisting them, (1) in a nonprofit corporation or public agency  
13           of the federal government or any state, city, or county; (2) in a  
14           bank or corporation authorized under the law of any state to  
15           engage in the business of a trust company; or (3) in a nonprofit  
16           corporation or with a professional fiduciary or organization of  
17           professional fiduciaries acting as a court-appointed fiduciary  
18           under the law of any state;

19  
20           (ii) Two or more years' experience as a court-appointed, qualified,  
21           and acting guardian or conservator of the person or estate of a  
22           minor or an adult under the law of any state; or

23  
24           (iii) A certificate as a paralegal from an accredited educational  
25           institution and two or more years' employment experience as a  
26           paralegal with a primary emphasis in probate-related areas of  
27           practice;

28  
29           (B) Has a two-year undergraduate degree or equivalent in a behavioral  
30           science, business, nursing, or accounting from an accredited  
31           educational institution and one of the following:

32  
33           (i) Five or more years' employment experience in a position and  
34           with an entity or individual described in (A)(i);

35  
36           (ii) Five or more years' experience as a court-appointed, qualified,  
37           and acting guardian or conservator of the person or estate of a  
38           minor or an adult under the law of any state; or

39  
40           (iii) A certificate as a paralegal from an accredited educational  
41           institution and five or more years' employment experience as a  
42           paralegal with a primary emphasis in probate-related areas of  
43           practice;

1  
2 (C) Has been appointed, qualified, and acted as guardian of the estate, or  
3 of the person and estate, or conservator of the person, of the estate,  
4 or of both, of 10 or more persons in the State of California in the  
5 five-year period immediately preceding January 1, 2006;  
6

7 (D) Has a current, active license in good standing, or an inactive license  
8 that was current, active, and in good standing within five years of  
9 the later of the effective date of this rule or the date of appointment  
10 as a private professional conservator and was neither revoked, nor  
11 resigned or surrendered with proceedings for revocation pending, to  
12 practice one of the following professions in the State of California:  
13

14 (i) Attorney at law,

15 (ii) Certified public accountant,

16 (iii) Educational psychologist,

17 (iv) Licensed clinical social worker,

18 (v) Marriage and family therapist,

19 (vi) Physician or surgeon,

20 (vii) Psychologist, or

21 (viii) Registered nurse; or  
22

23  
24  
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29  
30 (E) Is one of the following retired judicial officers of a California trial or  
31 appellate court:  
32

33 (i) A judge or justice of a trial or appellate court, or

34 (ii) A commissioner or juvenile court referee who was employed  
35 by a court in that capacity on a full-time basis at the time of his  
36 or her retirement;  
37

38  
39 (3) Has either:  
40

41 (A) Satisfied the requirements of (2)(C), or  
42

1 (B) Successfully completed a program of education approved by the  
2 Administrative Office of the Courts and received a certificate or its  
3 equivalent in professional fiduciary management for guardians or  
4 conservators; and  
5

6 (4) Has not:  
7

8 (A) Been convicted of any felony, or of a misdemeanor involving abuse  
9 or neglect of a child or an elderly or dependent adult;  
10

11 (B) Been determined to be liable in a civil action or proceeding for  
12 conversion, elder or dependent adult abuse or neglect,  
13 embezzlement, fraud, misappropriation, misrepresentation, or theft;  
14 or  
15

16 (C) Been removed as a fiduciary by a court for actions involving breach  
17 of fiduciary duty, conversion, fraud, misappropriation,  
18 misrepresentation, or theft.  
19

20 (c) **[Discretionary exception for small counties]**  
21

22 (1) Notwithstanding any other provision of this rule, a court in a county that  
23 has five or fewer private professional guardians or conservators, as  
24 determined under (2), who have been appointed as a private professional  
25 fiduciary in at least one guardianship or conservatorship matter that is  
26 then open and active in that court may, in the exercise of the court's  
27 discretion, appoint a private professional conservator who does not meet  
28 any of the requirements of (b)(2) and (3) on conditions satisfactory to the  
29 court, if the court determines that it is necessary to appoint a private  
30 professional conservator in a particular case.  
31

32 (2) The court must determine the number of private professional guardians or  
33 conservators active in its county at the time of the proposed discretionary  
34 appointment authorized under (1) by checking the latest annual  
35 information statements required by Probate Code section 2342 that are on  
36 file with the court as of the date of the proposed appointment, and  
37 reviewing the guardianship or conservatorship matters listed in the  
38 statements to confirm their status as open and active on that date.

1 **(d) [Transitional provisions for qualifications]**

2  
3 (1) (Completion of education requirements in 2006)

4  
5 (A) During 2006, the court may, in the exercise of its discretion, appoint  
6 as conservator of an unrelated person a private professional  
7 conservator who does not satisfy the prior experience requirement of  
8 (b)(2)(C) or the education requirement of (b)(3)(B) on the date of  
9 appointment.

10  
11 (B) A private professional conservator appointed under (A) must  
12 complete the education requirement of (b)(3)(B) and provide a  
13 certificate or other proof of completion satisfactory to the court  
14 before January 1, 2007.

15  
16 (C) The court must remove a private professional conservator appointed  
17 under (A) who fails to timely comply with (B).

18  
19 (3) (Conservatorships pending on January 1, 2006)

20  
21 (A) The court may, in the exercise of its discretion, permit a private  
22 professional conservator who was appointed and qualified as a  
23 conservator of an unrelated person before January 1, 2006, to  
24 continue as conservator after that date on conditions approved by the  
25 court, although the conservator is not on that date qualified under  
26 subparagraph (b)(2).

27  
28 (B) A private professional conservator permitted to continue as  
29 conservator under (A) may apply to the court for removal of any  
30 conditions imposed by the court at any time after January 1 2006,  
31 that he or she becomes qualified under (b)(2)(A), (B), or (D) and  
32 satisfies the education requirement of (b)(3)(B).

33  
34 **(e) [Continuing education]**

35  
36 (1) (Annual time requirements) Beginning on January 1, 2007, except as  
37 provided in (i), every private professional conservator must complete  
38 during each calendar year a minimum of 15 hours of continuing education  
39 from eligible providers under this rule.

40  
41 (A) A maximum of 4 of the 15 hours required by this paragraph may be  
42 by self-study under the supervision of an eligible continuing  
43 education provider that provides evidence of completion.

1  
2 (B) A private professional conservator may complete continuing  
3 education courses that satisfy the requirements of this subdivision  
4 offered by eligible continuing education providers by means of  
5 video presentations or other delivery means at remote locations.  
6 Such courses are not self-study within the meaning of this rule.

7  
8 (C) A private professional conservator who serves as an instructor in a  
9 continuing education course that satisfies the requirements of this  
10 rule may receive 1.5 hours of course participation credit for each  
11 hour of course instruction.

12  
13 (2) (Annual subject matter requirements)

14  
15 (A) At least 5 hours of continuing education each year must be in  
16 subjects appropriate for a conservator of the person.

17  
18 (B) At least 5 hours of continuing education each year must be in  
19 subjects appropriate for a conservator of the estate.

20  
21 (C) At least 1 hour of continuing education each year must be in  
22 fiduciary ethics.

23  
24 (3) (Subject matter for conservators of the person) “Subjects appropriate for  
25 a conservator of the person” under (2) include the following:

26  
27 (A) Advance directives and end-of-life decisions;

28  
29 (B) Assessment of living situations;

30  
31 (C) Communicating with adults with diminished capacity;

32  
33 (D) Community resources;

34  
35 (E) Dementia assessment;

36  
37 (F) Dementia powers;

38  
39 (G) Developmental disabilities;

40  
41 (H) Due Process in Competency Determinations Act;

42  
43 (I) Elder and dependent adult abuse or neglect and legal remedies;

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38  
39

- (J) Evaluation of residential care facilities;
- (K) Family dynamics and conflict resolution;
- (L) Home care of adults with diminished capacity;
- (M) Interstate issues in conservatorships of the person;
- (N) Involuntary mental health evaluation and intensive treatment for gravely disabled adults;
- (O) Lanterman-Petris-Short conservatorships;
- (P) Limited conservatorships of the person of developmentally disabled persons;
- (Q) Mandatory reporting requirements for elder and dependent adult abuse;
- (R) Medical decision making by conservators;
- (S) Medications for adults with diminished capacity;
- (T) Physical and cognitive functional assessments;
- (U) Probate Code and other California legal requirements for probate conservatorships of the person;
- (V) Reading and understanding medical charts;
- (W) Recognizing and evaluating mental illnesses;
- (X) Regulation of residential care facilities;
- (Y) Rights of residents and patients in residential, board-and-care, group living, and long-term care facilities; and
- (Z) Working with other professionals.

1 (4) (Subject matter for conservators of the estate) “Subjects appropriate for a  
2 conservator of the estate” under (2) include the following:

3  
4 (A) Asset recovery;

5  
6 (B) Court accounting;

7  
8 (C) Economics of fiduciary services;

9  
10 (D) Elder and dependent adult financial abuse and legal remedies;

11  
12 (E) Evaluation of investment securities;

13  
14 (F) Fiduciary liability;

15  
16 (G) Fiduciary office management and technology;

17  
18 (H) Income taxation;

19  
20 (I) Interstate issues in conservatorships of the estate;

21  
22 (J) Investment and other advisors for fiduciaries;

23  
24 (K) Liability insurance;

25  
26 (L) Limited conservatorships of the estate of developmentally disabled  
27 adults;

28  
29 (M) Litigation by and against conservators;

30  
31 (N) Marital and domestic partnership property issues in  
32 conservatorships;

33  
34 (O) Medi-Cal, Supplemental Security Income, and other public benefits;

35  
36 (P) Medicare and medical insurance;

37  
38 (Q) Personal property asset management;

39  
40 (R) Powers of attorney, abuses and remedies;

41  
42 (S) Probate Code and other California legal requirements for probate  
43 conservatorships of the estate;

1  
2 (T) The Prudent Investor Act and authorized investments by  
3 conservators;

4  
5 (U) Real property asset management;

6  
7 (V) Record keeping;

8  
9 (W) Risk management;

10  
11 (X) Special needs trusts; and

12  
13 (Y) Substituted judgment.

14  
15 (5) (Continuing education for dual-status private professional fiduciaries)  
16 Notwithstanding any other provision of this rule and rule 7.1010, a  
17 private professional conservator under this rule who is also a private  
18 professional guardian under rule 7.1010 may satisfy the minimum-hours  
19 requirements of both rules by completing a total of at least 15 hours of  
20 continuing education annually from eligible providers under either rule.

21  
22 **(f) [Approved eligible continuing education providers]**

23  
24 (1) Eligible continuing education providers may include accredited  
25 educational institutions, professional associations, professional  
26 continuing education groups, public or private for-profit or not-for-profit  
27 groups, and court-connected groups.

28  
29 (2) Effective January 1, 2008, continuing education providers and courses  
30 must be approved by the Administrative Office of the Courts.

31  
32 (3) Continuing education completed in calendar 2007 complies with the  
33 requirements of this rule if it addresses the subjects required by this rule,  
34 is certified for continuing education credit by the provider in accordance  
35 with the requirements of subdivision (g), and is provided by:

36  
37 (A) An accredited educational institution;

38  
39 (B) An accountancy organization or private education provider, if the  
40 education qualifies with the California State Board of Accountancy  
41 for continuing education credit for renewal of an individual license  
42 as a Certified Public Accountant;

43

- 1 (C) The Administrative Office of the Courts;
- 2
- 3 (D) The American Bar Association;
- 4
- 5 (E) The American Society of Aging;
- 6
- 7 (F) California Continuing Education of the Bar;
- 8
- 9 (G) The Gerontological Society of America;
- 10
- 11 (H) A local bar association or private education provider, if the
- 12 education qualifies with the California State Bar for continuing legal
- 13 education credit for a member of the California bar;
- 14
- 15 (I) The National Association of Professional Geriatric Care Managers;
- 16
- 17 (J) The National Association of Social Workers;
- 18
- 19 (K) The National Guardianship Association; or
- 20
- 21 (L) The Professional Fiduciary Association of California.
- 22

23 **(g) [Requirements for continuing education providers]** Each continuing  
24 education provider must:

- 25
- 26 (1) Ensure that the instructors teaching continuing education courses are
- 27 experts in the subject matter;
- 28
- 29 (2) Monitor and evaluate the quality of courses, curricula, instructors, and
- 30 instructor training;
- 31
- 32 (3) Keep records of attendance or self-study and distribute to each participant
- 33 a certificate of completion that identifies the education provider and
- 34 documents the subject taught, the number of hours of education offered,
- 35 and the number of hours the participant completed; and
- 36
- 37 (4) Be approved under (f)(2).
- 38

39 **(h) [Proof of compliance]**

- 40
- 41 (1) (Qualifications) Every private professional conservator, under penalty of
- 42 perjury, must demonstrate his or her qualifications under (b) in his or her
- 43 information statement filed with the clerk of each appointing court under

1 Probate Code section 2342, beginning with the first statement filed after  
2 the effective date of this rule and annually thereafter.

3  
4 (2) (Continuing education)

5  
6 (A) Every private professional conservator must declare, under penalty  
7 of perjury, that he or she has complied with the continuing education  
8 requirements under (e) for the previous calendar year in his or her  
9 annual statement filed with the clerk of each appointing court under  
10 Probate Code section 2342, beginning with the first statement filed  
11 after December 31, 2007, and annually thereafter.

12  
13 (B) Every private professional conservator must retain certificates of  
14 attendance or other proof of participation in continuing education  
15 required by this rule for a period of three years after the end of each  
16 year of education completed. An appointing court may require a  
17 private professional conservator to produce proof, in a manner  
18 determined by the court, of compliance with the requirement for any  
19 year at any time within that three-year period.

20  
21 (3) (Report of noncompliance to the Statewide Registry) If an appointing  
22 court determines that a private professional conservator has failed to  
23 comply with the qualification or continuing education requirements of  
24 this rule, the court clerk must forward a copy of the court's determination  
25 to the Statewide Registry under Probate Code section 2850(d).

26  
27 (i) **[Waiver of continuing education]** Notwithstanding any other provision of  
28 this rule, a court may, on ground of hardship, waive the continuing education  
29 requirements of (e), in whole or in part and under conditions satisfactory to the  
30 court, for any private professional conservator appointed by the court.  
31

**Legislative Counsel's Digest and Section 1 of AB 1155**

CHAPTER 625

FILED WITH SECRETARY OF STATE SEPTEMBER 21, 2004

APPROVED BY GOVERNOR SEPTEMBER 21, 2004

INTRODUCED BY Assembly Member Liu

An act to amend Sections 2342.5 and 2850 of, and to add Section 2344 to, the Probate Code, relating to conservators and guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 1155, Liu. Conservators and guardians: educational requirements. Existing law defines private professional conservators and private professional guardians and requires them to file specified information with the courts and to provide a specified declaration to a statewide registry. Existing law permits a person authorized by nonprofit, private entities to perform conservatorship functions to satisfy certain filing requirements a specified way. Existing law prohibits a court from appointing these guardians and conservators unless they are registered. A guardian or conservator who signs a declaration, as described above, that asserts the truth of any material matter which he or she knows to be false is guilty of a misdemeanor. Existing law establishes the Judicial Council and requires it to adopt rules relating to the administration of courts.

This bill would require the Judicial Council, on or before January 1, 2006, to adopt a rule of court that specifies the qualifications of private professional conservators and guardians, including certain educational requirements. The bill would require the Judicial Council to consult with specified parties in formulating the rule, and would permit the Judicial Council to include provisions waiving the requirements in cases of undue hardship. The bill would require private professional conservators and private professional guardians, other than persons who are appointed as a guardian of the person, as specified, to comply with these Judicial Council requirements, and would prohibit these guardians and conservators from registering with the Statewide Registry if they fail to fulfill these educational requirements. The bill would specify that a private professional conservator authorized by a nonprofit, private entity to perform conservatorship functions, as described above, is required to fulfill the educational requirements established by the Judicial Council for these conservators.

By changing the definition of a crime, this bill would create a state-mandated local program. The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would incorporate additional changes in Section 2850 of the Probate Code proposed by SB 1248 that would become operative only if SB 1248 and this bill are both chaptered and become effective on or before January 1, 2005.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

- (a) On or before January 1, 2006, the Judicial Council shall adopt a rule of court that shall do all of the following:
  - (1) Specifies the qualifications of a private professional conservator or private professional guardian.
  - (2) Specifies the number of hours of education in classes related to the duties of the conservator or guardian that a private professional conservator or private professional guardian must complete each year.
  - (3) Specifies the particular subject matter that may be included in the education required each year.
  - (4) Requires a private professional conservator or private professional guardian to certify to the court the completion of the yearly specified hours of education.
- (b) In formulating the rule required by this section:
  - (1) The Judicial Council shall consult with interested parties, including, but not limited to, the Professional Fiduciary Association of California, the California Bar Association, the National Guardianship Association, and the Association of Professional Geriatric Care Managers.

- (2) The Judicial Council may include provisions that allow courts to waive the educational requirements in individual cases when compliance would constitute an undue hardship.
- (c) In formulating the rule described by this section, the Judicial Council is not required to include provisions regarding the qualifications or educational requirements of an individual who is appointed by the court pursuant to Section 1514 as a guardian of the person only.

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**Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators  
(adopt Cal. Rules of Court, rules 7.1010 and 7.1060)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
1.	Ms. Grace Andres Program Manager Superior Court of California, County of Solano Fairfield, California	A	N	Agree with proposed changes.	No response necessary.
2.	Mr. Phillip H. Banks Banks & Banks Fiduciary Services La Mesa, California	AM	N	<p>I am writing in support of the changes proposed in the new rules, with the modifications described below. In general, I am very much in support of the establishment of qualifications and continuing education requirements for private fiduciaries. In recent years, there has been a wave of new practitioners calling themselves “private fiduciaries” who are seeking appointments as conservator, guardian, or trustee. In my personal observations, some of these practitioners possess minimal or no education or experience related to the role. The proposed rules go a long way to address this problem.</p> <p>There are two changes I would like to suggest for consideration by the Committee:</p> <p>1. Proposed rule 7.1060(b)(2)(C) on page 20 of the rule proposal lists nine professional licenses which would satisfy the education/experience requirement. I believe two additional licenses should be added to the list: Certified Financial Planner (CFP®) and Certified Trust and</p>	<p>1. The committee does not support this proposed change. The Certified Financial Planner, or CFP®, and the Certified Trust and Financial Advisor (CTFA) are certifications conferred by private organizations.</p>

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				<p>Financial Advisor (CTFA). Both of these licenses require applicants to have substantial education and pass certification exams. The subject matter of the background required is germane to fiduciary administration and includes estate planning, investments, taxation, etc. After initial qualification, licensees are required to adhere to a code of ethics and meet continuing education requirements.</p> <p>Just out of curiosity, I wonder how “pharmacists” ended up on the list of licensees qualifying as professional conservators. What education does a pharmacist have that would be relevant to management of conservatorships?</p> <p>2. Proposed rule 7.1060(b)(3) on page 20 of the</p>	<p>The CFP® designation is offered by the Certified Financial Planner Board of Standards, Inc.; the CTFA designation is awarded by the Institute of Certified Bankers, a national association affiliated with the American Bankers Association.</p> <p>The advisory committee supports the change recommended in this comment, one of three received on this point. Pharmacists have been deleted from the list of licensees that would be qualified for appointment as private professional guardians and conservator (proposed rules 7.1010(b)(2)(D) and 7.1060(b)(2)(D)). See particularly the comment of attorney Judith Copeland below. Ms. Copeland points out that fiduciaries rely on health-care providers for medical decisions. A pharmacist’s familiarity with prescription medicine is not likely to supplant that reliance.</p> <p>2. The advisory committee does not support this proposed change.</p>

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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>rule proposal requires that a professional conservator be appointed as a conservator for ten or more persons in the previous five years <i>or</i> complete a certification program in fiduciary management. Assuming it is intended that the primary certification program would be the courses offered through California State University, Fullerton, I am concerned that the modest 54 hours of study in four classes required by the Fullerton program would be redundant or inconsequential for those with advanced degrees or substantial education in related fields. I suggest that a third criterion be added to this provision of the rule so that the qualification could be met by holding one of the licenses specified in the proposed rule. Many very qualified, experienced, and educated fiduciaries specialize more in appointments as trustee rather than conservator and may not be able to meet the “ten conservatorships in five years rule” but have other education and experience as evidenced by holding the specified professional licenses.</p>	<p>Many, if not all, of the licenses listed in the rules do not require any specific familiarity with proper fiduciary management. The proposed rules require work experience in fields relevant to performance as a fiduciary in addition to two-year or four-year college degrees. Licensees would not be required to have this work experience. The California State University, Fullerton certificate program or its equivalent would provide basic education about fiduciary responsibilities that many of the listed licensees will not have received from any other source before they seek appointment as guardians or conservators.</p>
3.	Ms. Judith M. Copeland Attorney at Law Certified Specialist, Estate Planning,	AM	Y	I am an attorney who has practiced in the probate field exclusively since 1977. I have extensive experience working with professional	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
	Trust, and Probate Law Copeland & Tierman, LLP San Diego, California			<p>fiduciaries (ppfs). I support the effort to regulate ppfs and appreciate the work and effort that has gone into Item SPR05-39.</p> <p>With the many fiduciaries I have represented, I have found little correlation between education and success as a fiduciary. The possession of a college degree is not a guarantee that the applicant knows anything related to being a fiduciary or has the integrity needed to be a fiduciary. I represent a ppf who has no college education but has worked as a fiduciary for over twenty years. The court often selects her for the most difficult cases and is very impressed with the results she obtains. She maintains an office with three full-time employees. She is far more qualified to act than a 25-year old novice with a college degree.</p>	<p>In response to the many comments concerning a college education as a qualification to support a person’s appointment as a private professional fiduciary, the advisory committee has revised the proposed rules to apply the “10 in 5” standard (10 appointments as a guardian or conservator in the five years immediately preceding January 1, 2006) under rules 7.1010(b)(3)(A) and 7.1060(b)(3)(A) as a separate track or basis for eligibility for appointment in lieu of a college degree and prior work experience. (See revised rules 7.1010(b)(2)(C) and 7.1060(b)(2)(C).)</p> <p>Eleven of the 24 commentators urge elimination of the college degree requirement or an exception to that requirement for professionals with substantial experience as appointed guardians or conservators. Ten of these 11 commentators are attorneys from eight different firms</p>

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**Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators  
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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>I am also curious why a pharmacist is qualified to act as a guardian or conservator. The pharmacist has no formal training in accounting, investing, decision-making, the legal system or the myriad of other skills needed to be a conservator. I believe a paralegal’s education is far more relevant than that of a pharmacist, nurse, educational psychologist, or social worker. Fiduciaries do not get into trouble because they agreed to a certain prescription or course of medical care. Like the rest of us, they follow the advice of health care providers. Fiduciaries get in trouble for poor investment decisions, self-dealing, lack of respect for the law, and failure to account.</p> <p>Lastly, the transitional provisions of the proposed rules seem fair but will work only if there actually are programs up and running in 2006 and available to everyone in the state. The programs will need to be reasonably priced and geographically convenient.</p> <p>In summary:</p> <ul style="list-style-type: none"> <li>• A college degree is irrelevant;</li> </ul>	<p>in San Diego, who praise the success of one or more private professionals who practice in that county without college degrees.</p> <p>The advisory committee has deleted “pharmacist” from the list of licensees eligible to practice as private professional guardians or conservators under proposed rules 7.1010(b)(2)(D) and 7.1060(b)(2)(D).</p> <p>The advisory committee appreciates this concern, and will work closely with the Administrative Office of the Courts (AOC) to ensure that the AOC-approved programs meet the criteria mentioned by the commentator.</p> <ul style="list-style-type: none"> <li>• See the above discussion</li> </ul>

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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<ul style="list-style-type: none"> <li>• Delete the exception for pharmacists, therapists, psychologists, and social workers;</li>   <li>• Create an exception for paralegals; and</li> </ul>	<p>concerning the college degree requirement.</p> <ul style="list-style-type: none"> <li>• See the above discussion concerning elimination of pharmacists from the list of eligible licensees. The advisory committee disagrees with the proposal to eliminate the other licensees mentioned.</li>   <li>• In response to several comments in favor of paralegals, the advisory committee has revised the proposed rules to add a tailored provision for certificated paralegals working in probate-related fields for a significant period of time, as an alternative two-year or five-year employment required with either the four-year or two-year college degree. (See rules 7.1010(b)(2)(A)(iii) and (B)(iii); and</li> </ul>

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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<ul style="list-style-type: none"> <li>• Create an exception for the working ppf with extraordinary experience—50 cases within 10 years, for example.</li> </ul>	<p>7.1060(b)(2)(A)(iii) and (B)(iii).)</p> <ul style="list-style-type: none"> <li>• See the above discussion concerning the college degree requirement and the redefinition of the “10 in 5” rule as a separate basis for qualification as a professional guardian or conservator.</li> </ul>
4.	Hon. Thomas C. Edwards Judge of the Superior Court of California, County of Santa Clara San Jose, California	AM	N	Either delete rules 7.1010(h)(3) and 7.1060(h)(3), which require court clerks to report to the Statewide Registry of Fiduciaries the failure of professional guardians and conservators to comply with the qualification or continuing education requirements of these rules, or change these provisions from mandatory (“must”) to discretionary (“may”).	The advisory committee disagrees with this proposed change. These proposed rules would be directly enforced by appointing courts, in the sense that private professionals subject to the rules will be required to annually certify to these courts that they comply with the qualifications and, beginning with the annual statement first filed after December 31, 2007, the continuing education requirements. Probate Code section 2344 requires professional guardians or conservators to satisfy the experience (qualifications) and continuing education requirements

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	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
					<p>established by these rules. If they fail to do so, they would be unable to register with the Statewide Registry and therefore would become ineligible to continue as a fiduciary in current matters or to be appointed in new cases (Prob. Code, § 2851(a) and (b)).</p> <p>The Registry’s only source of independent information about a private professional’s failure to comply with the requirements of these rules will be the appointing courts. (See Prob. Code, §2850(b)(9).) Fiduciaries must reregister with the Registry only once every three years (Prob. Code, §2850(a)(3)). Under the proposed rules, the courts would receive updated information on continuing education annually. This information should be transmitted to the Registry annually by appointing courts. The Registry, the public, and other courts should not have to wait for as long as three years to learn that a registrant has not complied with the requirements of these rules and thus is ineligible to continue in current appointments</p>

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**Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators  
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	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
					or accept new ones.
5.	Ms. Linda A. Gorham Court Manager Superior Court of California, County of San Francisco San Francisco, California	A	N	Agree with proposed changes.	No response necessary.
6.	Ms. Maureen F. Hallahan Attorney at Law Procopio, Cory, Hargreaves & Savitch, LLP San Diego, California	AM	N	<p>I have practiced in the fields of probate, trusts, and estate law since 1986. I have extensive experience working with private professional fiduciaries and actively support the efforts to regulate private professional fiduciaries. I appreciate the time and effort that has gone into this proposal. However, I feel compelled to make some comments relating to proposal no. SPR05-39.</p> <p>In the course of representing private fiduciaries, I personally have found little correlation between formal education and the qualities that make a successful, respected, and effective fiduciary. A college degree is not necessarily a guarantee that a person has the qualifications necessary to act as a private professional fiduciary. I often represent a private professional fiduciary who has no college education yet she is not only my choice, if I am able to select or guide the selection of a</p>	See above discussion concerning the college degree requirement, particularly the response to the comment of Ms. Judith Copeland.

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(adopt Cal. Rules of Court, rules 7.1010 and 7.1060)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>fiduciary, but she is the choice of the courts in many difficult and acrimonious cases. She has worked as a private professional for over twenty years and has been selected and appointed by the court in the most difficult cases. In those cases, all parties and the court are impressed with the results she has been able to obtain. She maintains an office with three full-time employees and carries out her duties with integrity, dedication, efficiency, competence, and a strong work ethic.</p> <p>I firmly believe that there should be an exemption for private professional fiduciaries with extraordinary experience and a certain length of time, for example ten years, working in that field.</p> <p>Additionally, I question why a pharmacist is considered qualified to act as a guardian or conservator. Typically, a pharmacist has no formal training in accounting, investing, fiduciary responsibilities, decision-making, the legal system, or the myriad of other skills needed to be a competent guardian or conservator. I believe the education and experience of a paralegal is far more relevant than that of a pharmacist, nurse, educational</p>	<p>The advisory committee has revised the rules to establish the “10-in-5” provision (10 appointments as a guardian or conservator in the 5 years before the effective date of these rules) as a fifth independent qualification for appointment.</p> <p>See above discussion concerning elimination of the pharmacy license from the list of licensees who would be eligible for appointment as a private professional fiduciary.</p>

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**Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators  
(adopt Cal. Rules of Court, rules 7.1010 and 7.1060)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>psychologist, or social worker.</p> <p>The transitional provisions proposed seem fair and workable but only if there are active programs available to everyone in the state in 2006. The program must also be reasonably priced and geographically convenient.</p> <p>In summary, I believe that (1) a college degree is not relevant and it should not be required; (2) the exception for pharmacists, therapists, psychologists, and social workers should be deleted; (3) that an exception be created for paralegals; and (4) that an exception be created for the working private professional fiduciary with extraordinary experience—for example, fifty cases and/or ten years.</p>	<p>The advisory committee appreciates this concern, and will work closely with the AOC to ensure that the AOC-approved programs meet the criteria mentioned by the commentator.</p> <p>The advisory committee disagrees with the comment concerning licensees other than pharmacists. It has revised the rules to create a tailored exemption for certificated paralegals working in probate-related fields for a significant period of time, as a form of prior employment experience coupled with the four-year or two-year college degree requirements.</p>
7.	Mr. Ralph E. Hughes Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Glenn, Wright, Jacobs & Schell San Diego, California	AM	N	<p>I am in general agreement that regulation of private professional fiduciaries is appropriate.</p> <p>I do not agree, however, that a college education is a necessary qualification for a professional fiduciary. I believe that two of the finer private fiduciaries in San Diego do not have college educations. They are smart, effective, and their</p>	See above discussion concerning the college degree requirement.

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**Qualifications and Continuing Education Requirements for Private Professional Guardians and Conservators  
(adopt Cal. Rules of Court, rules 7.1010 and 7.1060)**

	<b>Commentator</b>	<b>Position</b>	<b>Comment on behalf of group?</b>	<b>Comment</b>	<b>Response of the Probate and Mental Health Advisory Committee</b>
				<p>accounts balance. My experience with them tells me that a smart person who is good with numbers can do a great job as a conservator of guardian of an estate.</p> <p>If a college education must be required, it would make sense to apply the requirement only to new fiduciaries, so that people who have already established their livelihoods can continue to support themselves without the need to get a college degree.</p>	<p>The advisory committee’s action to restructure the “10 in 5 rule,” 10 appointments as a guardian or conservator in the five years before January 1, 2006, as an independent qualification for future appointments, would have the effect desired by this commentator.</p>
8.	<p>Mr. Samuel D. Ingham Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Beverly Hills, California</p>	A	N	<p>Agree with proposed changes.</p>	<p>No response necessary.</p>
9.	<p>Ms. Julie A. Jones Attorney at Law Certified Specialist, Estate Planning, Trust, and Probate Law Brierton, Jones &amp; Jones LLP San Diego, California</p>	AM	Y	<p>I have 20 years of experience as an attorney practicing in the areas of estate planning and administration.</p> <p>I have represented many private professional fiduciaries over the past 20 years. I can assure you that there is <i>no</i> correlation between such fiduciaries’ college degrees and their ability to</p>	<p>See above discussion concerning the college degree requirement and modification of the rules to permit experience as a certificated</p>

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(adopt Cal. Rules of Court, rules 7.1010 and 7.1060)**

	Commentator	Position	Comment on behalf of group?	Comment	Response of the Probate and Mental Health Advisory Committee
				<p>properly perform their duties. Indeed, the best private professional fiduciaries, in my opinion, are those who have been trained as legal assistants and worked under the direction of qualified attorneys, and those who have obtained experience as fiduciaries by working with bank trust departments or trust companies. Through this process they learn how to keep proper records, prepare accurate fiduciary accountings, address tax issues, deal with family issues, meet deadlines, perform their duties in an ethical manner, and deal with the stress of a fiduciary’s considerable responsibility. Private professional fiduciaries who have had no practical training and who lack these skills are the ones who fail and cause harm to those in their charge. I would also add that membership in a professional fiduciary association is no guarantee of competence and ethics, although such membership can be a helpful means of obtaining continuing education and learning from peers.</p> <p>Clearly, some standards must be developed for private professional fiduciaries who are appointed in court-supervised matters. However, it seems to me that these qualifications should be based on an individual’s demonstrated ability to perform the required duties rather than on whether the</p>	<p>paralegal to satisfy the work-experience component of the college degree requirement.</p> <p>The work-experience requirement, two years for a four-year college degree holder, five years for a two-year college degree holder, should provide valuable additional experience for private professionals attempting to qualify under the college degree provisions.</p>

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				<p>individual has obtained a college degree in a field which might be largely unrelated to fiduciary work.</p> <p>For the above reasons, I would suggest to you that the standards for certifying private professional guardians and conservators should focus on experience, training (not necessarily in the form of college courses), and recommendations from attorneys who practice in this field. A college degree and a clean record should not be enough, nor should a college degree be a requirement. At a minimum, demonstrated practical experience of some length of time should be deemed the equivalent of college training, if it is determined that a college degree is even relevant.</p> <p>Without meaning to overstate the importance of attorneys in this area, I can tell you that the probate bar is a relatively small part of the California Bar. We tend to see each other regularly and to discuss among ourselves our experiences with fiduciaries and other whom we encounter before the probate court. In doing estate planning, we are also in a position to make recommendations to our clients about private professional fiduciaries whom they might consider naming in their documents, often in roles where no court supervision is</p>	<p>See above discussion concerning the college degree requirement and application of the “10 in 5” provision as a ground of eligibility for appointment as a private professional fiduciary instead of a college education for currently-practicing fiduciaries.</p> <p>The advisory committee disagrees with this proposal to require private professional guardians or conservators to be recommended to appointing courts by one or more attorneys. This proposal would present difficult definitional and administrative problems for courts. Probate Code section 2342(a) describes the information statements private professional must annually file with appointing courts.</p>

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				contemplated. We tend to know who the qualified, ethical, competent private professional fiduciaries are, and we tend to know who to avoid. Requiring written recommendations by several members of this section of the bar who have some level of experience would be a far better means of ensuring that qualified persons are appointed by the courts than requiring a college degree.	Section 2342(a)(2) requires at least three professional references to be included in the statement. This provision could be satisfied by references from attorneys or, perhaps more important, satisfied clients or members of clients’ families. The references are not, however, substitutes for the initial qualification requirements of these rules.
10.	Superior Court of California, County of Los Angeles (commentator otherwise not identified).	AM	Y	<p><b>Proposed rule 7.1010</b></p> <ul style="list-style-type: none"> <li>• Paragraph (b)(1)(A)(i)(3) [page 8]— Should there be a definition of “professional fiduciary?”</li> </ul> <ul style="list-style-type: none"> <li>• Paragraph (b)(4) [page 10]—Suggest</li> </ul>	<p><b>Proposed rule 7.1010</b></p> <ul style="list-style-type: none"> <li>• The advisory committee disagrees with this proposed change. “Professional fiduciary” is not a term of art as used in the referenced portion of the rule, and in this context also covers fiduciaries from other jurisdictions. Such a definition could not be precisely made and is unnecessary. A wide rather than narrow interpretation of the term is preferable.</li> <li>• The advisory committee disagrees with this proposed</li> </ul>

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				<p>adding a provision concerning State Bar of other licensing authority discipline for actions involving conversion, fraud, or misappropriation of client funds [perhaps a similar provision re other professionals listed in (b)(2)(C) (page 9) should be included.]</p> <ul style="list-style-type: none"> <li>Paragraph (h)(3) [page 17]—Probate Code section 2850(d) requires the court to report only when the conservator’s or guardian’s failure to properly perform duties “results in an order for surcharge . . .” It is unclear what is intended by the reference to section 2850(d). Should this paragraph delete the reference to that section?</li> </ul>	<p>change. Monitoring the license regulatory activity for attorneys or other licensees would be difficult or impossible. The requirement that the license be in good standing or not resigned in the face of charges pending should be sufficient evidence of compliance with licensee ethics standards.</p> <ul style="list-style-type: none"> <li>The advisory committee disagrees with this recommendation. See the discussion above in response to the comment of Hon. Thomas C. Edwards. The “reference to section 2850(d)” is intended to show that courts must report violations by fiduciaries to the Statewide Registry in the manner required under section 2850(d). Failure to meet the qualifications and continuing education requirements of these rules would be another example of misconduct that should be reported to the</li> </ul>

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				<p><b>Proposed rule 7.1060</b></p> <ul style="list-style-type: none"> <li>[comments noted above repeated concerning the identical provisions of rule 7.1010.]</li> </ul>	<p>Registry in the manner described in that section.</p> <p><b>Proposed rule 7.1060</b></p> <ul style="list-style-type: none"> <li>See the responses above concerning the identical provisions of rule 7.1010.</li> </ul>
11.	Mr. Stephen V. Love Court Executive Officer Superior Court of California, County of San Diego San Diego, California	A	N	Agree with proposed changes.	No response necessary.
12.	Ms. Margaret Laughlin Martin Attorney at Law Law Offices of Margaret L. Martin San Mateo, California	AM	N	The requirement of ten cases in the past five years [rules 7.1010(b)(3)(A) and 7.1060(b)(3)(A)] is too restrictive. Ten cases, especially complex and difficult cases, would be an excessive load. I have three professional conservator clients who are very experienced, handle complex cases, and are qualified by San Mateo Superior Court for appointment in high-conflict situations where a neutral fiduciary is necessary. None of them carries ten cases.	The advisory committee disagrees with this recommended change. The fiduciary is not required to carry ten cases at any one time. Instead, he or she must have been responsible for a total of at least ten matters (guardianships or conservatorships) during the five-year period.
13.	Hon. Dennis E. Murray Presiding Judge of the	A	Y	In particular I appreciate the exceptions for “small counties.” This is a good example of	No response necessary.

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	Superior Court of California, County of Tehama Red Bluff, California			how rules can be written to accommodate diverse circumstances.	
14.	Mr. Jim Nord Self employed Napa, California	N	N	<p>Having a two- or four- year degree does not qualify a person as a conservator. Having a test to pass just means creating jobs for test-taking schools. Success on the test does not mean that the person taking the test really understands being a conservator.</p> <p>How would these requirements be monitored? If this will be like other licensed professions under the Department of Consumer Affairs or the Department of Real Estate, such as funeral directors and embalmers or real estate appraisers, what is the use?</p> <p>Compliance with these requirements would mean extra time and work taken away from needed fiduciary services.</p>	<p>See above discussion concerning the college-degree requirement. These rules do not condition eligibility to act as a fiduciary on the successful taking of a particular test.</p> <p>The program will be administered by the Administrative Office of the Courts, the Statewide Registry of the Department of Justice, and enforced by individual courts, ultimately in their appointment decisions.</p> <p>The Legislature has determined that these requirements are important enough to justify the time necessary to comply with them.</p>
15.	Mr. Ron Patterson President, Professional Fiduciary Association of California Sacramento, California	AM	Y	<p><b>Rules 7.1010 and 7.1060</b> Section (b)(2)(C) [Page 20] We feel that these professions would be qualified under sections (b)(2)(A) or (b)(2)(B), which require not only an education component, but also work</p>	<p>The advisory committee disagrees with this proposed change. (In the rules revised by the committee, the license requirement has been moved</p>

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				<p>experience as well. Mere licensing under the listed professions does not justify waiving the work experience.</p> <p>Section (c) Discretionary exception for small counties:</p> <p>Which listing will determine “small county” status, local court information statement or Statewide Registry? If the Statewide Registry is used, it lists only the county the fiduciary is located in, not all the counties he or she may practice in. There are also many duplicate listings. The registry also does not distinguish between conservators and trustees.</p>	<p>to (b)(2)(D)) In the committee’s view, the license requirements, plus the course in fiduciary management, should be sufficient to authorize appointment of a licensee as a professional fiduciary without the work-experience requirements.</p> <p>Each court would rely on its local filings, not the Statewide Registry, to determine whether there are a sufficient number of fiduciaries operating in their county. (See rules 7.1010(c)(2) and 7.1060(c)(2).</p>
16.	Mr. Timothy G. Riley Attorney at Law Certified Specialist, Estate Planning, Trust & Probate Law Branton & Wilson, a Prof. Corp. San Diego, California	A	Y	As an attorney who has practiced in the probate area for nearly twenty years, I have had many opportunities to work with professional fiduciaries in a wide variety of matters. Certainly, some of my dealings have been with “professionals” who were ill-equipped to take on the responsibilities demanded of them. Fortunately, those instances have been relatively rare. I certainly support the effort to impose	

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				<p>reasonable regulations on those who wish to act as private professional fiduciaries, and I very much appreciate the work that has gone into developing the pending proposals. However, I would like to provide you with the following comments:</p> <p>My primary concern is with the potential requirement that a private professional fiduciary have a college degree. While that level of education may be generally indicative of a person’s intellectual abilities, I believe it is far more important to consider the person’s practical training and experience. For example, someone who has worked as a probate paralegal or in responsible position with a corporate trust department would most likely be much more qualified to act as a fiduciary than someone with a college liberal arts degree. At least two of the most qualified and reliable professional fiduciaries in San Diego are people who, although they lack a college degree, have a wealth of relevant experience and take great pride in doing the best job possible. Given the frequency with which these two individuals are appointed by the court to the most challenging cases, it is apparent that our probate judges and their personnel agree.</p> <p>In conclusion, I respectfully submit that the</p>	<p>See the discussion above concerning the two-year and four-year college degree requirements. These requirements do not stand alone. They are coupled with two- or five-year experience requirements, including employment as a probate paralegal. (See revised rules 7.1010(b)(2)(A) and (B) and 7.1060(b)(2)(A) and (B).) Thus private professionals who desire to qualify for court appointments under the college degree provisions will be required to demonstrate practical and relevant work experience in addition to their educational accomplishments.</p>

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				<p>requirement of a college degree should be dropped, or that exceptions be included for those individuals who possess substantial training and experience, such as probate paralegals or those with substantial experience currently working as private professional fiduciaries. Furthermore, I support reasonable requirements for continuing education in this area, as long as approved programs are fairly priced and readily available throughout the state.</p> <p>Thank you for your consideration.</p>	
17.	Ms. Diane Ritchey-Andrews Attorney at Law San Diego, California			<p>Having practiced in the area of probate for over 20 years. I am writing to comment on SPR05-39. It is clear what the general intention is, to set out the qualifications and continuing education for persons working as professional guardians and conservators. I applaud what has been created, and only have one additional that I'm hoping you will consider.</p> <p>I think Rule 7.1060(b), for example, should actually read, "Except as otherwise provided... effective January 1, 2006, a court may not appoint a private professional conservator, with less than 15 years experience, as conservator of an unrelated person unless the private</p>	See the discussion above concerning the college degree requirements. The "10 appointments in 5 years" provision has been recast as an independent ground for qualification for appointment as a private professional guardian or conservator.

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				<p>professional conservator...” I believe there should be some kind of provision to allow for people who are successfully and competently working as court-appointed, qualified and acting private professional fiduciaries to continue their work no matter what their education level. I don’t think we can just change this qualification and put a lot of really good professional fiduciaries out of work.</p> <p>I personally work with one private professional fiduciary here in San Diego who is extraordinarily competent and highly thought of by the court, although she only has a high school diploma. I would really hate to compromise her services, and her livelihood by sending her back to class for a certificate from the continuing education component.</p> <p>Thank you for your consideration.</p>	
18.	<p>Mr. James H. Siegel Attorney at Law Certified Specialist, Estate Planning, Trust &amp; Probate Law Branton &amp; Wilson, a Prof. Corp. San Diego, California</p>	A	Y	<p>I am an attorney who has practiced exclusively in the areas of estate planning, probate administration, trust administration, and guardianship and conservatorship administration since 1986. I am certified as a specialist in estate planning, trust and probate law by the State Bar of California Board of Legal Specialization. I have worked on numerous matters with private professional fiduciaries as well as corporate fiduciaries since I started</p>	

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				<p>practice. I support the effort to regulate private professional fiduciaries and appreciate the work and effort that has gone into Item SPR05-39</p> <p>With the many fiduciaries I have represented, I have found little correlation between education and success as a fiduciary. The possession of a college degree is not a guarantee that the applicant knows anything related to being a fiduciary or has the integrity needed to be a fiduciary. I represent at least two private professional fiduciaries who do not have formal college education, but whom have worked as fiduciaries for over twenty years. The local probate courts often selects these individuals to act in the most difficult cases, and the court have been very impressed with the manner in which the conflicts in these cases have been resolved and in which the ongoing management of the resulting administrations have been handled. In addition, both of these individuals are routinely asked to act in mattes that are not under court supervision by other attorneys. I personally have referred cases to both of these individuals that have involved extraordinary family conflicts at the outset together with assets of considerable value and complexity. Both of these individuals maintain offices with full-time employees. In light of the nature of cases where a private professional fiduciary</p>	<p>See the discussion above concerning the college degree requirements.</p>

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				<p>likely would be asked to act, I am convinced by my more than 20 years experience that the lack of a college degree in the private professional fiduciaries I routinely represent has absolutely no impact on their ability to act competently and effectively in generally very difficult family circumstances.</p> <p>Therefore, I think it important to recognize that there should be an exception to the proposed regulation of private professional fiduciaries for those that have significant experience in the field, regardless of their formal education. Perhaps a performance based standard in lieu of a background education requirement would be best, say for those with experience in at least 50 cases and with at least 10 years experience as a full-time professional fiduciary.</p> <p>Thank you for your consideration.</p>	<p>Revision of the proposed rules to recast the “10 appointments in 5 years” provision as an alternative to a college degree and other work experience should satisfy this commentator’s concerns.</p>
19.	Mr. Todd F. Stevens Attorney at Law Keeney Waite & Stevens San Diego, California	A	Y	I am an attorney who has practiced in the probate litigation field for 15 years. I was the president of the San Diego County Bar Association in 1999, and I am a current California State Bar delegate to the ABA House of Delegates. I have extensive experience working with professional fiduciaries (ppfs). I	

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				<p>support the effort to regulate ppfs ad appreciate the work and effort that has gone into Item SPR05-39.</p> <p>However, I oppose the requirement that a fiduciary possess a college degree. Many of the fiduciaries I have represented do not have a college degree, but have decades of experience in the field. Experience as a fiduciary is far more important than a college degree. Including a four year degree requirement will exclude many talented fiduciaries from the field.</p> <p>I think the more prudent guidelines would be to provide an exemption to a working fiduciary with significant prior experience and for experienced paralegals.</p> <p>Thank you for considering my comments.</p>	<p>See above responses to comments concerning the college degree requirements and the addition of paralegal employment to the work-experience requirements.</p>
20.	Ms. Emily Stuhlbarg Professional Fiduciary Emily Stuhlbarg & Associates, Inc. Torrance, California	AM	Y	<p>Definitely agree with standards and experience. Judicial officers would be good guardians but not always good conservators. Possible conflict of interest?</p>	<p>The advisory committee disagrees with this comment concerning [retired] judicial officers.</p> <p>The advisory committee has made one change in the proposed rules affecting retired judicial officers. That category of eligible private professionals has been enlarged to</p>

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				Do not understand why there is both county and state registration. Duplication?	include juvenile court referees in addition to judges and commissioners. Both commissioners and referees must have been employed in those capacities on a full-time basis when they retired. The duplicate registration system, under which private professional fiduciaries must file information statements with appointing courts and must also register with the Statewide Registry of Private Professional Conservatees, Guardians, and Trustees, is a current requirement of the law.
21.	Mr. Kent C. Thompson Attorney at Law Showley & Thompson, LLP San Diego, California	A	Y	I am an attorney in private practice, having worked in the area of estate, trust, conservatorship and guardianship administration for more than thirty years. During that time a substantial portion of my law practice has been devoted to the representation of private professional fiduciaries (“fiduciaries”)  I am informed that significant effort has been expended drafting regulations for fiduciaries, which effort is both supported and appreciated.  I am further informed that one of the	

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				<p>requirements being considered is that a fiduciary must have a bachelor’s degree. After inquiry, I am aware of several fiduciaries I have represented or presently represent or with whom I have worked extensively who do not have college degrees. These individuals have served and continue to serve at the pleasure and with the utmost respect of the San Diego County Probate Judiciary, having had many years of practical training and experience. If a person possesses the financial and humanistic experience required to be a fiduciary, I am at a loss to understand why a bachelor’s degree should be a condition of their being allowed to continue their profession or how a degree will insure that a person will be a better fiduciary.</p> <p>Based upon my continuing education and experience, fiduciaries who have breached their duties as such have usually either made poor investment decisions without adequate attention, have been self-dealing, have failed to file Accounts (often due to either poor investments or self-dealing) or out of a lack of respect for the law. Also, from my experience, I am hard pressed to find any correlation between possessing a college degree and being qualified to act as a fiduciary. I suggest that with appropriate, available and affordable continuing education, a college degree should not be a</p>	<p>See the discussion above concerning the college degree requirements. Revision of the proposed rules to recast the “10 appointments in 5 years” provision as an alternative to a college degree and other work experience should satisfy this commentator’s concerns.</p>

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				<p>condition to be authorized to act as a fiduciary in the state of California.</p> <p>In the alternative, if a degree requirement is established, I respectfully suggest that there needs to be a specific “grandfather” clause for those fiduciaries who currently have years of experience, for example confirmation of an applicant having twenty administrations in the last ten years, or some other reasonable but substantial criteria to confirm that the individual applicant possess sufficient experience as a fiduciary.</p>	
22.	<p>Mr. Patrick Williams Private Professional Fiduciary San Mateo, California</p>	AM	Y	<p>We had a presentation by [private professional fiduciary] Daniel Stubbs Thursday night regarding the Judicial Council SPR05-39. The proposed legislation concerning the Qualifications and the Continuing Education SPR05-39 for private professional conservator needs to be revised. I understand the basic premise for the legislation though, which is good. Here are my qualification that I have worked hard to attend and spent much money and time.</p> <ul style="list-style-type: none"> <li>• B.S Business Management (many math and other related finance courses completed).</li> </ul>	<p>The advisory committee disagrees with the changes requested by this commentator. He is a college graduate without the relevant two-year work experience requirement. He has taken the certificate fiduciary management course that is contemplated as the first such course to be approved by the Administrative Office of the Courts in 2006. Mr. Williams could be employed by another private fiduciary for two years before establishing himself as a qualified fiduciary eligible to accept court</p>

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				<ul style="list-style-type: none"> <li>• Certificate of completion from CSUF—Fiduciary Management for the Conservator</li> <li>• 30 years employment in materials and asset management for various Silicon Valley Companies.</li> <li>• Active PFAC member</li> <li>• Part time Care giving role for a somewhat demented person for a year.</li> </ul> <p>Here is my main question. The answer will determine if I should invest anymore dedication, time and expense towards this vital career.</p> <p>Will my 30 years employment above in the Materials and Asset Management field satisfy the “relevant 2 years employment experience?”</p> <p>I can’t afford to sit out a couple more years to be “Qualified with relevant expense.”</p> <p>My main concern is that aspect of “related experience. The San Mateo superior court has already advised me that I can’t currently be a court-appointed private professional fiduciary because I don’t have the experience. I need to</p>	<p>appointments on his own.</p>

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				<p>have a couple “cases” behind me before I would be eligible. I have run into the roadblock of Sorry. No Experience.</p> <p>I CAN’T GET EXPERIENCE BECAUSE I DON’T HAVE EXPERIENCE.</p> <p>Catch 22. what am I to do</p> <p>Please do me the favor and respond with comments or suggestions. This is a field I know I will do well if I am given the opportunity.</p> <p>Thank you very much for hearing my plight.</p>	
23.	<p>Mr. Mark E. Zatt Attorney at Law Certified Specialist, Estate Planning, Trust and Probate Law San Diego, California</p>	AM	Y	<p>Please revise the formal education requirements to allow a person without any college education to serve as a PPG or PPC if they already have extensive experience in these areas when the educational requirements become effective (i.e. grandfather in experienced PPGs and PPCs regardless of formal education). Some excellent current PPGs and PPCs do not have college educations. We’ll lose them under the proposed new rules.</p>	<p>See the discussion above concerning the college degree requirements.</p>

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24.	Mr. Dean Zipser President Orange County Bar Association Irvine, California	AM	Y	<p>The rule as proposed may be so onerous that it discourages people from entering the field, reducing an already small pool of professionals from which to choose. We recommend that (b) (2) (A) and (B) for both Guardians and Conservators to be combined into a new (A) as follows and the remaining subsections be renumbered to follow.</p> <p>(b) [Qualification for appointment] Except as otherwise provided in this rule, effective January 1, 2006, a court may not appoint a private professional guardian as guardian of the estate or guardian of the person and estate of an unrelated minor unless the private professional guardian satisfies the following qualifications on the date of the order of appointment:</p> <p>(2) Satisfies one or more of the following subparagraphs:                      (A) Has a two year degree or the equivalent from an accredited educational institution and one of the following:                      (i) Two or more years' employment experience in a position with responsibility for the care or management of the persons or estates of children or dependent, developmentally disabled, or mentally ill adults, or supervision of</p>	The advisory committee disagrees with this proposal, which would replace the four-year college degree (any subject) + 2 years work experience and the two-year college degree (specific subjects) + 5 years work experience with a two-year college degree (any subject) + two years' work experience.

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				<p>those caring for or assisting them, (1) in a nonprofit corporation or public agency of the federal government or any state, city, or county; (2) in a bank or corporation authorized under the law of any state to engage in the business of a trust company; or (3) in a nonprofit corporation or with a professional fiduciary or organization of professional fiduciaries acting as a court-appointed fiduciary under the law of any state; or (ii) Two or more years' experience as a court-appointed, qualified, and actual guardian or conservator or the person or estate of a minor or an adult under the law of any state.</p>	