

Invitation to Comment

Title	<p>Probate and Mental Health: Qualifications for Membership on the Probate and Mental Health Advisory Committee (amend rule 10.44 of the California Rules of Court)</p>
Summary	<p>The proposed amendment to rule 10.44 would revise the membership categories for the Judicial Council’s Probate and Mental Health Advisory Committee to ensure that probate court investigators and persons knowledgeable in mental health and developmental disability issues are consistently represented on the committee.</p>
Source	<p>Probate and Mental Health Advisory Committee Hon. Don Edward Green, Chair</p>
Staff	<p>Douglas C. Miller (415) 865-7535 douglas.miller@jud.ca.gov</p>
Discussion	<p>Rule 10.44 of the California Rules of Court prescribes the responsibilities of the Judicial Council’s Probate and Mental Health Advisory Committee. Subdivision (c) of the rule defines the qualifications for committee membership and requires that the members of the committee must always include at least one representative of each category. There are five membership categories. One of these places probate court staff attorneys, examiners, and court investigators in a single membership category. Another category combines persons knowledgeable in mental health, developmental disabilities, and private management of probate matters. (Rules 10.44(c)(3) and (4).)</p> <p>The combination of different professional perspectives into single membership categories tends to result in under-representation of some elements of these categories. For example, the committee in recent years has had several members who are probate staff attorneys or examiners, resulting in the elimination or reduction of participation by probate court investigators. Similarly, the single membership category of persons knowledgeable in mental health, developmental disabilities, or private management of probate matters tends to be overrepresented by private professional fiduciaries, leaving a shortage of members with experience concerning mental health or developmental disabilities issues.</p>

Recent legislation has greatly changed and expanded the role of court investigators in conservatorship cases.¹ At this time and for the next several years while the committee works on projects to implement the legislation, including new programs for the initial and continuing education of court investigators, this advisory committee particularly needs contributions from this important profession.

The committee proposes to amend rule 10.44(c) to create a separate membership category for court investigators, thereby ensuring that at least one court investigator be represented on the committee at all times. This proposal would also amend the rule to separate the private manager of probate estates from the category of persons knowledgeable in mental health or developmental disabilities, to provide greater emphasis on mental health and developmental disability issues within the committee's purview.²

The advisory committee is currently authorized to have 16 three-year-term members.³ This proposal would not involve an increase in full-term members.

A copy of the proposed amended rule 10.44 is attached.

Attachment

¹ The Omnibus Conservatorship and Guardianship Reform Act of 2006, Stats. 2006, chapters 490–493, particularly, chapter 493 (Assembly Bill 1363).

² The definition of the membership category of persons knowledgeable in mental health or developmental disability issues would also be modified to emphasize that the knowledge in these areas should be of the law that pertains to them. The committee's focus in the mental health field is primarily on the Lanterman-Petris Short Act (Welf. & Inst. Code, § 5000, et seq.), principally the provisions governing the conservatorship of persons gravely disabled as the result of mental illness or chronic alcoholism (Welf. & Inst. Code, §§ 5350–5371). The committee's interest in developmental disability issues concerns limited probate conservatorships for persons with developmental disabilities (see Probate Code section 1828.5).

³ The committee currently has 15 full three-year-term members, plus one one-year-term advisory member. The sixteenth 3-year member, a court investigator, resigned shortly after his appointment in 2006 because he left the profession and court employment. The committee hopes to replace this former member with another court investigator.

Rule Proposal

Rule 10.44 of the California Rules of Court would be amended, effective January 1, 2008, to read:

1 **Rule 10.44. Probate and Mental Health Advisory Committee**

2
3 **(a) Area of focus**

4
5 The committee makes recommendations to the council for improving the
6 administration of justice in proceedings involving:

- 7
8 (1) Decedents' estates, trusts, conservatorships, guardianships, and other
9 probate matters; and
10
11 (2) Mental health and developmental disabilities issues.

12
13 **(b) Additional duty**

14
15 The committee must coordinate activities and work with the Family and
16 Juvenile Law Advisory Committee in areas of common concern and interest.
17

18 **(c) Membership**

19
20 The committee must include at least one member from each of the following
21 categories:

- 22
23 (1) Judicial officer with experience in probate;
24
25 (2) Lawyer whose primary practice involves decedents' estates, trusts,
26 guardianships, conservatorships, or elder abuse law;
27
28 (3) ~~Lawyer, or examiner, or probate investigator~~ who works for the court
29 on probate or mental health matters;
30
31 (4) Investigator who works for the court to investigate probate
32 guardianships or conservatorships;
33
34 ~~(4)(5)~~ Person knowledgeable in mental health or developmental disabilities
35 disability law; or
36
37 (6) Person knowledgeable in private management of probate matters in a
38 fiduciary capacity; and

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2
3

~~(5)(7)~~ County counsel, public guardian, or other similar public officer
familiar with guardianship and conservatorship issues.

Item SPR07-34 Response Form

Title: Probate and Mental Health: Qualifications for Membership on the Probate and Mental Health Advisory Committee (amend rule 10.44 of the California Rules of Court)

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

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Camilla Kieliger,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Camilla Kieliger
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Wednesday, June 20, 2007
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

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