

First Supplement to Memorandum 2011-24

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
(Comments of CANHR)**

Attached is a letter from attorney Anthony Chicotel on behalf of California Advocates for Nursing Home Reform (“CANHR”). Mr. Chicotel writes that “[a]lthough CANHR is generally supportive of a uniform approach to conservatorship jurisdictional issues, we share some of the concerns raised by Peter Stern and TEXCOM that accepting out-of-state conservatorships could allow California residents to lose very intimate rights to control their lives and property without the substantive and due process protections provided by California law.” In particular,

- CANHR “agree[s] with Mr. Stern that California should reject any conservatorship based on an incapacity standard less stringent than California’s.”
- CANHR hopes California will reject any out-of-state conservatorship that does not include medical evidence of incapacity.
- CANHR hopes California will reject any out-of-state conservatorship in which the conservatee had no right to counsel when such a right exists in California.

Mr. Chicotel explains that CANHR is “very aware of the difficulties posed by conflicting jurisdictional issues related to conservatorships, and understand[s] a uniform act can alleviate a great deal of the stress on families who are trying to care for a loved one.” But CANHR wants “to be sure that the resolution of those issues does not unduly deprive California residents of their rights.”

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission’s website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission’s staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting.

CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

650 Harrison Street • 2nd Floor .San Francisco, CA 94107 • 415-974-5171 • 800-474-1116 • Fax 415-777-2904

June 1, 2011

JUN -6 2011

California Law Revision Commission
Barbara Gaal, Chief Deputy Counsel
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Dear Ms. Gaal:

Thank you for sharing the staff memoranda and other materials on UAGPPJA. Pat McGinnis forwarded copies of those materials to me since I often work on conservatorship issues. Can you please add me to your mailing and electronic mailing lists (tony@canhr.org)?

Although CANHR is generally supportive of a uniform approach to conservatorship jurisdictional issues, we share some of the concerns raised by Peter Stern and TEXCOM that accepting out-of-state conservatorships could allow California residents to lose very intimate rights to control their lives and property without the substantive and due process protections provided by California law. We agree with Mr. Stern that California should reject any conservatorship based on an incapacity standard less stringent than California's. We also hope that out-of-state conservatorships would be rejected that did not include medical evidence of incapacity or the right to counsel for conservatees when required under California law.¹

We are very aware of the difficulties posed by conflicting jurisdictional issues related to conservatorships and understand a uniform act can alleviate a great deal of the stress on families who are trying to care for a loved one. We just want to be sure that the resolution of those issues does not unduly deprive California residents of their rights.

We appreciate the opportunity to participate in the Law Revision Commission's consideration of adopting a uniform act in California.

Sincerely,


Anthony Chicotel
Staff Attorney

¹ Medical evidence of incapacity is required to determine whether a conservatee has: 1) the medical (in)ability to attend hearings, 2) the ability to give informed consent to medical treatment, or 3) dementia. (Probate Code §§ 1825(b), 1890, and 2356.5(f)(3)) Local rules may require medical declarations in additional situations. Conservatees must have an attorney upon request or when the conservatee is the subject of dementia powers authorizing locked-door placements or involuntary administration of medication. (Probate Code §§ 1471, 2356.5) Some jurisdictions provide counsel to all proposed conservatees.