

Memorandum 2014-3

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Conforming Revisions**

At the December meeting, the Commission¹ approved a final recommendation proposing the enactment of a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) in California. The proposed legislation will be introduced in the Legislature soon.

If the Legislature enacts UAGPPJA as the Commission recommends, some existing California statutes will have to be repealed or revised due to that enactment. The Commission included some such conforming revisions in its recommendation, but directed the staff to continue to search and analyze the codes for additional conforming revisions that might be necessary.² This memorandum reports on what the staff has found thus far.

The following materials are attached as exhibits:

	<i>Exhibit p.</i>
• Prob. Code §§ 1840-1844.....	1
• Prob. Code §§ 1845-1849.5	2
• Prob. Code §§ 2500-2507.....	4

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

AUTHORITY TO FILE A PETITION FOR INSTRUCTIONS OR A PETITION TO
GRANT A POWER OR AUTHORITY (SECTION 1455)

Section 1455 provides:

1. 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. Minutes (Dec. 2013), p. 12.

1455. Any petition for instructions or to grant a guardian or a conservator any power or authority under this division, which may be filed by a guardian or conservator, may also be filed by a person who petitions for the appointment of a guardian or conservator.

This provision makes clear that a person who petitions for the appointment of a guardian or a conservator does not need to wait until the court makes an appointment before filing a petition that seeks instructions or a particular power or authority.

If UAGPPJA were enacted in California, a court might construe Section 1455 to apply to a petition to transfer a conservatorship to California, because such a petition essentially seeks the appointment of a California conservator. To eliminate any doubt about the matter, however, **it might be helpful to amend the section along the following lines:**

Prob. Code § 1455 (amended). Authority to file petition for instructions or petition to grant power or authority

1455. Any petition for instructions or to grant a guardian or a conservator any power or authority under this division, which may be filed by a guardian or conservator, may also be filed by a person who petitions for the appointment of a guardian or conservator, including, but not limited to, a person who petitions under Section 2002 for transfer of a conservatorship.

Comment. Section 1455 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Would the Commission like to recommend such a revision?

ABSENTEE (SECTIONS 1403, 1803, 1841-1844)

A California court may appoint a conservator of the estate for an “absentee,”³ which is defined as:

(a) A member of a uniformed service covered by United States Code, Title 37, Chapter 10, who is determined thereunder by the secretary concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.

(b) An employee of the United States government or an agency thereof covered by United States Code, Title 5, Chapter 55, Subchapter VII, who is determined thereunder by the head of the department or agency concerned, or by the authorized delegate thereof, to be in missing status as missing status is defined therein.⁴

3. Section 1803.

4. Section 1403.

Some special procedural rules (reproduced at Exhibit p. 1) apply when seeking this type of appointment. In particular,

- The petition for appointment must contain certain additional information about the conservatee and the conservatee's spouse.⁵
- Additional notice requirements apply.⁶
- A citation to the proposed conservatee is not required.⁷
- An official record that the proposed conservatee is an absentee is to be received in evidence and deemed sufficient to establish that the proposed conservatee is unable to attend the hearing on the petition.⁸

After finding these provisions, the staff consulted Ben Orzeske of the Uniform Law Commission regarding how UAGPPJA's jurisdictional rules would apply to a conservatorship for an absentee, and whether other states had encountered any problems in applying those rules to an absentee. Mr. Orzeske explained that an absentee's "home state" would be determined by examining where the absentee resided before becoming an absentee. If the person is absent so long that he or she no longer has a "home state" under the UAGPPJA definition, then jurisdiction would be determined by the location of the absentee's personal or real property, and any other significant-connection factors. Mr. Orzeske was not aware of any problems in determining jurisdiction for an absentee using UAGPPJA. He suspected that California would not have to take any special steps to coordinate UAGPPJA with its laws governing a conservatorship for an absentee, but he cautioned that he was not familiar with those laws.

The staff concurs that applying UAGPPJA's jurisdictional rules to an absentee is likely to be relatively straightforward. It occurred to us, however, that some revisions might be necessary to coordinate UAGPPJA's transfer procedure with California's conservatorship provisions relating to absentees.

Suppose, for example, that an absentee military officer has personal property located in Nevada and a Nevada court appoints the officer's spouse to serve as a conservator of the estate for that officer. If the spouse later moves to California to take a new job, the spouse might also want to relocate the officer's personal property and the authority to manage it. Rather than establishing a new

5. Section 1841 (reproduced at Exhibit p. 1).

6. Section 1842 (reproduced at Exhibit p. 1).

7. Section 1843 (reproduced at Exhibit p. 1).

8. Section 1844 (reproduced at Exhibit p. 1).

conservatorship from scratch in California, the spouse might petition to transfer the conservatorship under California's version of UAGPPJA.

California's conservatorship provisions relating to absentees should be adjusted to accommodate that type of situation. **That could be done by revising those provisions along the following lines:**

Prob. Code § 1840 (amended). Appointment of conservator for absentee

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

Comment. Section 1840 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1841 (amended). Contents of petition relating to absentee

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822, Section 2002, or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

Comment. Section 1841 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1842 (amended). Notice requirements for petition relating to absentee

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822 or 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

Comment. Section 1842 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1843 (amended). Notice requirements for petition relating to absentee

1843. (a) No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

(b) No notice is required under Section 2002 to the proposed conservatee if the proposed conservatee is an absentee.

Comment. Section 1843 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1844 (amended). Proof of inability to attend hearing

1844. (a) ~~An~~ In a proceeding to appoint a conservator for an absentee under Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8, an official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Comment. Section 1844 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

MISSING PERSON (SECTIONS 1804, 1845-1849.5)

A California court may also appoint a conservator of the estate for a person who is “missing and whose whereabouts is unknown.”⁹ Again, some special rules apply to that type of appointment. See Sections 1846-1849.5 (reproduced at Exhibit pp. 2-3).

Like the special rules applicable to an absentee, the special rules applicable to a missing person appear to need some revisions to accommodate an appointment made pursuant to UAGPPJA’s transfer procedure. **The staff suggests revising those provisions along the following lines:**

Prob. Code § 1845 (amended). Appointment of conservator for missing person

1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

9. Section 1804.

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

Comment. Section 1845 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1846 (amended). Contents of petition relating to missing person

1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the petition states that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.

(b) The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(c) The last known residence of the missing person.

(d) A description of any search or inquiry made concerning the whereabouts of the missing person.

(e) A description of the estate of the proposed conservatee which requires attention, supervision, and care.

Comment. Section 1846 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1847 (amended). Notice requirements for petition relating to missing person

1847. In addition to the persons and entities to whom notice of hearing is required under Section 1822 or Section 2002, if the proposed conservatee is a person who is missing and whose whereabouts is unknown:

(a) A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition shall be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.

(b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the

proposed conservatee was last known to reside if the proposed conservatee's last known address is in this state.

(c) Pursuant to Section 1202, the court may require that further or additional notice of the hearing be given.

Comment. Section 1847 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1848 (amended). Acts not required in proceeding to appoint conservator for missing person

1848. (a) In a proceeding under Article 3 (commencing with Section 1820) to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required:

~~(a)~~ (1) Issuance of a citation to the proposed conservatee pursuant to Section 1823.

~~(b)~~ (2) Service of a citation and petition pursuant to Section 1824.

~~(c)~~ (3) Production of the proposed conservatee at the hearing pursuant to Section 1825.

~~(d)~~ (4) Performance of the duties of the court investigator pursuant to Section 1826.

~~(e)~~ (5) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

(b) In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, the following acts are not required:

(1) Notice to the proposed conservatee pursuant to Section 2002.

(2) Production of the proposed conservatee at the hearings pursuant to Section 2002.

(3) Performance of the duties of the court investigator pursuant to Section 1851.1.

(4) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

Comment. Section 1848 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1849 (amended). Required findings for appointment of conservator for missing person

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the court finds that the proposed conservatee owns or is entitled to the possession of personal

property that is to be relocated to this state upon approval of the transfer.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

Comment. Section 1849 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1849.5 (unchanged). Additional rules on appointing conservator for missing person

1849.5. (a) A petition may be filed under this article regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing.

(b) If a trustee was appointed pursuant to former Section 262, repealed by Chapter 201 of the Statutes of 1983, the provisions of former Sections 260 to 272, inclusive, repealed by Chapter 201 of the Statutes of 1983, continue to apply to the case after December 31, 1983, unless, upon a petition filed under this article after December 31, 1983, the trustee is replaced by a conservator.

ORDER REGARDING CONSERVATEE’S CAPACITY TO GIVE INFORMED CONSENT TO
MEDICAL TREATMENT (SECTION 1890)

Under Section 1880, if a court determines that there is no form of medical treatment for which a conservatee has sufficient capacity to give informed consent, the court shall (1) adjudge that the conservatee lacks the capacity to give informed consent for medical treatment, and (2) give the conservator of the person authority to make medical decisions for the conservatee, subject to certain statutory requirements. Section 1890(a) allows a court to include an order under Section 1880 in an order appointing a conservator “if the order was requested in the petition for the appointment of the conservator or, except in the case of a limited conservator, may be made subsequently upon a petition made, notice, and heard by the court in the manner provided in this article.”

If California enacts UAGPPJA, it might be helpful to expressly state that a court could include an order under Section 1880 in an order that appoints a California conservator for a conservatorship that is transferred to California.

That could be done by revising Section 1890 along the following lines:

Prob. Code § 1890 (amended). Rules relating to court order under Section 1880

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order

was requested in the petition for the appointment of the conservator or the transfer petition under Section 2002 or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.

(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

Comment. Subdivision (a) of Section 1890 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Would the Commission like to recommend such a revision?

PROPER COURT FOR SEEKING APPROVAL OF COMPROMISE OF CLAIM OR
EXTENSION, RENEWAL, OR MODIFICATION OF OBLIGATION (SECTION 2505)

If California enacts the Commission's proposed version of UAGPPJA, an out-of-state conservator could register the conservatorship in California. Proposed Section 2014 would specify the effect of such registration.

Proposed Section 2014 would also provide guidance on the proper forum for obtaining court approval, or taking other action in court, if such approval or action is necessary while acting pursuant to registration. As explained below, that aspect of proposed Section 2014 conflicts to some extent with existing Section 2505. Some revisions of Section 2505, and perhaps also proposed Section 2014, appear necessary to harmonize the two provisions.

To help the Commission resolve this matter, we first examine the approach it took in proposed Section 2014, and then contrast that approach with the one in existing Section 2505. Next, we present some options for harmonizing the two

provisions. After discussing those options, we provide the staff's analysis and tentative recommendation on how to proceed.

Proposed Section 2014

Proposed Section 2014 takes a California-oriented approach to forum selection when an out-of-state conservator is acting in California pursuant to registration:

§ 2014. Effect of registration [UAGPPJA § 403]

2014. (a) Upon registration of a conservatorship order from another state, the conservator may, while the conservatee resides out of this state, exercise in any county of this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. When acting pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. If a law of this state, including, but not limited to, Section 2352, 2352.5, 2355, 2356.5, 2540, 2543, 2545, or 2591.5, or Article 2 (commencing with Section 1880) of Chapter 4 of Part 4, mandates compliance with special requirements to exercise a particular conservatorship power or take a particular step, the conservator of a registered conservatorship may not exercise that power or take that step without first complying with those special requirements.

(b) When subdivision (a) requires a conservator to comply with a law of this state that makes it necessary to obtain court approval or take other action in court, the conservator shall seek that approval or proceed as needed in an appropriate court of this state. In handling the matter, that court shall communicate and cooperate with the court that is supervising the conservatorship, in accordance with Sections 1984 and 1985.

(c) Subdivision (a) applies only when the conservatee resides out of this state. When the conservatee resides in this state, a conservator may not exercise any powers pursuant to a registration under this article.

(d) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order.

Comment. Subdivision (a) of Section 2014 is similar to Section 403(a) of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to:

- (1) Underscore that any conservatorship registered in California is fully subject to California law while the conservator is acting in the state. For example, if a conservatorship is registered in California and the conservator wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia) within the state, the requirements of that section must be satisfied. Similarly, if the conservator of a registered conservatorship wishes to sell the conservatee's personal residence located in California, the transaction must comply with California's special requirements for such a sale (see, e.g., Sections 2352, 2352.5, 2540(b), 2543, 2591.5).
- (2) Emphasize that registration of an out-of-state conservatorship in one county is sufficient; it is not necessary to register in every county in which the conservator seeks to act.
- (3) Make clear that a registration is only effective while the conservatee resides in another state. If the conservatee becomes a California resident, the conservator cannot act pursuant to a registration under Section 2011, 2012, or 2013, but can petition for transfer of the conservatorship to California under Article 2. For an exception to the rule that a registration is only effective while the conservatee resides in another state, see Section 2017 (California tribal court conservatorship order).

Subdivision (b) provides guidance on which court is the appropriate forum for purposes of complying with California procedures as required under subdivision (a).

Subdivision (c) further underscores that a registration is only effective while the conservatee resides in another jurisdiction. For an exception to this rule, see Section 2017 (California tribal court conservatorship order).

Subdivision (d) is the same as Section 403(b) of UAGPPJA.

For limitations on the scope of this chapter, see Section 1981 & Comment.¹⁰

As drafted, subdivision (b) would make clear that when an out-of-state conservator has to comply with a California law requiring court approval or other court action, the proper forum is a California court, not the out-of-state court supervising the registered conservatorship.

Section 2505

The forum selection approach in proposed Section 2014(b) might be deemed to conflict with Section 2505, which also provides guidance on where to seek

10. Emphasis added.

court approval of certain matters. To understand Section 2505, it is first necessary to explain its statutory context.

Section 2505 is in an article governing the ability of a guardian or conservator to compromise a claim or action, or extend, renew, or modify an obligation. In general, a guardian or conservator is permitted to take such a step without seeking court approval, if that step “is to the advantage of the estate.”¹¹ Sections 2501-2504 (reproduced at Exhibit pp. 4-6) specify certain situations where court approval is required.

Section 2505 provides guidance on the proper forum for seeking the required court approval:

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

Conflict Between Proposed Section 2014(b) and Section 2505

With regard to a conservatorship registered under the Commission’s proposed version of UAGPPJA, the staff sees two inconsistencies between proposed Section 2014(b) and Section 2505.

First, suppose that the conservator of a registered conservatorship wants court approval of a deal relating to a claim or matter that is the subject of a lawsuit pending in another state (e.g., an agreement to sell the conservatee’s ownership interest in a California house to his estranged wife for a certain sum,

11. Section 2500.

to settle a divorce case pending outside California). If subdivisions (a) and (c) of Section 2505 were left unchanged, the conservator could seek court approval from either (1) “[t]he court in which the action or proceeding is pending” (which is not a California court in our hypothetical), or (2) “[t]he court in which the ... conservatorship is pending” (which is not a California court in our hypothetical). In contrast, proposed Section 2014(b) would only permit the conservator to seek such approval in an appropriate California court.

Second, suppose that the conservator of a registered conservatorship wants court approval of a transaction relating to a claim or matter that is not the subject of a pending action or proceeding (e.g., an agreement to sell the conservatee’s vacation home or personal residence for a certain sum). If subdivision (b) of Section 2505 was left unchanged, the conservator could seek such approval in three different forums:

- (1) *The court in which the conservatorship is pending.* In our hypothetical, this is not a California court.
- (2) *The superior court of the county where the conservatee or conservator resides at the time the petition for approval is filed.* This probably would have to be a California court, because of the reference to a “superior court.” In our hypothetical, there might not be such a California court, because the conservatee and conservator probably reside outside California.
- (3) *The superior court of any county where a suit on the claim or matter properly could be brought.* Again, this probably would have to be a California court, because of the reference to a “superior court.”

In contrast, Section 2014(b) would only permit the conservator to seek such approval in an appropriate California court.

Resolving the Conflict: Option #1

How should the Commission propose to reconcile Section 2505 with proposed Section 2014(b)? The simplest option (Option #1) would be to make Section 2505 inapplicable to a registered conservatorship. That could be done by amending the section along the following lines:

Prob. Code § 2505 (amended). Proper forum for seeking court approval

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

(d) This section does not apply to a conservatorship that is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3.

Comment. Section 2505 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*). For guidance on the proper forum for seeking court approval with regard to a conservatorship that is registered under that act, see Section 2014 & Comment (effect of registration).

This option would be consistent with the general approach that the Commission took in proposed Section 2014(b). Under that approach, if a conservator chooses to rely on California's registration procedure to take action in the state, the conservator would have to go to a California court, not a court of another state, to obtain any necessary court approval. The underlying idea is that California courts are best-situated to preserve California policies and implement California procedural requirements (e.g., the use of a court investigator).

Option #2

Although Option #1 has advantages, it might not make sense to require an out-of-state conservator to seek approval in California in circumstances where Section 2505 would permit a California conservator to seek approval elsewhere. Specifically, if a California conservator wants to compromise a claim that is the subject of a lawsuit pending outside California, Section 2505(c) currently authorizes the conservator to seek approval of the proposed compromise not only in California, but also in the out-of-state court in which the claim is pending. Perhaps California law should give a similar choice to the conservator of a

conservatorship that is registered in California: Either seek approval in California, or do so in the out-of-state court in which the claim is pending.

If the Commission would like to follow that approach, it could propose to amend Section 2505 along the following lines (Option #2):

Prob. Code § 2505 (amended). Proper forum for seeking court approval

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

(d)(1) Subdivisions (a), (b), and (c) do not apply to a conservatorship that is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3.

(2) Except as provided in paragraph (3), when a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3, the court approval required by this article shall be obtained in accordance with Section 2014.

(3) Notwithstanding Section 2014, when a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3, and the claim or matter in question is the subject of a pending action or proceeding that is not brought in a court of this state, the court approval required by this article may be obtained from the court in which the action or proceeding is pending.

Comment. Section 2505 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Option #3

Still another possibility would be to revisit the California-oriented approach that the Commission took in proposed Section 2014(b). One could conclude that the proposed approach is too rigid, and the section should be revised to provide greater flexibility about which forum to use when a California law makes it necessary for the conservator of a registered conservatorship to obtain court approval or take other action in court.

If the Commission is inclined in this direction, there are many different ways in which it could proceed. For example, proposed Section 2014 could be revised along the following lines (Option #3):

2014. (a) Upon registration of a conservatorship order from another state, the conservator may, while the conservatee resides out of this state, exercise in any county of this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. When acting pursuant to registration, the conservator is subject to the law of this state governing the action, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this state. If a law of this state, including, but not limited to, Section 2352, 2352.5, 2355, 2356.5, 2540, 2543, 2545, or 2591.5, or Article 2 (commencing with Section 1880) of Chapter 4 of Part 4, mandates compliance with special requirements to exercise a particular conservatorship power or take a particular step, the conservator of a registered conservatorship may not exercise that power or take that step without first complying with those special requirements.

(b) When subdivision (a) requires a conservator to comply with a law of this state that makes it necessary to obtain court approval or take other action in court, the conservator shall seek that approval or proceed as needed in an appropriate court of this state. In handling the matter, that court shall communicate and cooperate with the court that is supervising the conservatorship, in accordance with Sections 1984 and 1985. Upon a showing of good cause, the court may direct the conservator to seek the necessary approval or take the required action in a court of another state.

....

This approach would be somewhat less protective of California policies and procedures than the Commission's current approach; in some circumstances, it would rely on a court of another state to enforce a California policy or follow a California procedural requirement. But those circumstances would be limited

(due to the good cause requirement) and within the control of a California court. Moreover, the approach could have important benefits, such as allowing adjudication to occur in a tribunal that has great familiarity with the parties and the subject matter, or a tribunal that would be convenient for everyone involved.

Analysis and Recommendation

The Commission should undertake a careful balancing of the interests at stake. In particular, it may be helpful to consider the following questions:

- Do the potential benefits of Option #3 outweigh its drawbacks?
- Is it a good idea to provide greater flexibility than the California-oriented approach currently in proposed Section 2014(b)?
- If greater flexibility is desirable, is Option #3 the best means of achieving such flexibility? Would it be preferable to revise proposed Section 2014(b) in some other manner?
- If proposed Section 2014(b) is revised, how should the revised version be coordinated with Section 2505? For example, should Option #3 be combined with Option #1? Would it be better to combine Option #3 with Option #2, or with some other amendment of Section 2505?

Comments on these points would be particularly useful.

The staff does not have a firm sense of which approach would be best. **We are slightly inclined towards combining Option #3 with Option #2.** This is only a tentative recommendation, however, and we are eager to hear other perspectives on the matter. **We strongly encourage knowledgeable persons and organizations to help the Commission reach a good decision by sharing their views and any relevant information.**

APPEALABLE ORDERS (SECTIONS 1300-1301)

The Commission's proposed version of UAGPPJA contemplates several types of court rulings, including in particular rulings on:

- (1) Whether a California court has jurisdiction of a conservatorship proceeding pending in the state (proposed Sections 1991-1995, 1999).
- (2) Whether a California court should decline to exercise its jurisdiction because a court of another state is a more appropriate forum (proposed Section 1996).

- (3) Whether a California court acquired jurisdiction to appoint a conservator because of unjustifiable conduct, and, if so, what action to take in response (proposed Section 1997).
- (4) Whether to provisionally grant a petition to transfer a conservatorship from California to another state (proposed Section 2001).
- (5) Whether to issue a final order transferring a conservatorship from California to another state (proposed Section 2001).
- (6) Whether to provisionally grant a petition to transfer a conservatorship to California (proposed Section 2002).
- (7) Whether to issue a final order accepting a transfer to California (proposed Section 2002).
- (8) Whether and, if so, how to modify an out-of-state conservatorship to conform to California law upon transfer (proposed Section 2002).
- (9) Review of an out-of-state conservatorship being transferred (proposed Section 2002).
- (10) Whether and how to enforce a conservatorship registration (proposed Section 2014).
- (11) Whether a third person has acted in good faith reliance on a conservatorship registration and should be excused from liability (proposed Section 2015).¹²

If California enacts the proposed legislation, people will need to know which court rulings contemplated by California's version of UAGPPJA are appealable. The remainder of this memorandum focuses on that matter. To determine how to provide the necessary guidance, the first step is to examine existing law governing appealability.

Existing Statutes Governing Appealability

Several existing statutes on appealability are relevant to UAGPPJA. First, Code of Civil Procedure Sections 904-904.5 provide basic guidance on when an appeal may be taken in a civil action or proceeding. In general, a final judgment is appealable, but only certain specified types of interlocutory orders are

12. See Pre-Print Recommendation on *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* (Dec. 2013). 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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

appealable.¹³ “The theory is that piecemeal disposition and multiple appeals in a single action would be oppressive and costly, and that a review of intermediate rulings should await the final disposition of the case.”¹⁴

Probate Code Section 1300 makes some additional types of orders appealable in all proceedings governed by the Probate Code:

1300. In all proceedings governed by this code, an appeal may be taken from the making of, or the refusal to make, any of the following orders:

(a) Directing, authorizing, approving, or confirming the sale, lease, encumbrance, grant of an option, purchase, conveyance, or exchange of property.

(b) Settling an account of a fiduciary.

(c) Authorizing, instructing, or directing a fiduciary, or approving or confirming the acts of a fiduciary.

(d) Directing or allowing payment of a debt, claim, or cost.

(e) Fixing, authorizing, allowing, or directing payment of compensation or expenses of an attorney.

(f) Fixing, directing, authorizing, or allowing payment of the compensation or expenses of a fiduciary.

(g) Surcharging, removing, or discharging a fiduciary.

(h) Transferring the property of the estate to a fiduciary in another jurisdiction.

(i) Allowing or denying a petition of the fiduciary to resign.

(j) Discharging a surety on the bond of a fiduciary.

(k) Adjudicating the merits of a claim made under Part 19 (commencing with Section 850) of Division 2.

Finally, Probate Code Section 1301 supplements the general provisions discussed above. It lists appealable orders with respect to guardianships, conservatorships, and other protective proceedings:

1301. With respect to guardianships, conservatorships, and other protective proceedings, the grant or refusal to grant the following orders is appealable:

(a) Granting or revoking of letters of guardianship or conservatorship, except letters of temporary guardianship or temporary conservatorship.

(b) Granting permission to the guardian or conservator to fix the residence of the ward or conservatee at a place not within this state.

(c) Directing, authorizing, approving, or modifying payments, whether for support, maintenance, or education of the ward or conservatee or for a person legally entitled to support, maintenance, or education from the ward or conservatee.

13. See Code Civ. Proc. §§ 904.1 (appeal in unlimited civil case); 904.2 (appeal in limited civil case).

14. 9 B. Witkin, California Procedure *Appeal* § 96, pp. 158-59 (5th ed. 2008).

(d) Granting or denying a petition under Section 2423 [payment of estate's surplus income to relatives of conservatee] or under Article 10 (commencing with Section 2580) of Chapter 6 of Part 4 of Division 4 [substituted judgment].

(e) Affecting the legal capacity of the conservatee pursuant to Chapter 4 (commencing with Section 1870) of Part 3 of Division 4.

(f) Adjudicating the merits of a claim under Article 5 (commencing with Section 2500) of Chapter 6 of Part 4 of Division 4 [compromise of claims and actions; extension, renewal, or modification of obligations].

(g) Granting or denying a petition under Chapter 3 (commencing with Section 3100) of Part 6 of Division 4 [proceeding for court order authorizing a particular transaction].

A CEB treatise on conservatorship law provides a good discussion of the criteria used to determine the appealability of conservatorship orders:

Many orders are appealable under Prob C §§1300-1301 *because they finally adjudicate a dispute concerning the personal rights or welfare of the conservatee*. For example, an order is appealable if it does or refuses to do any of the following:

- Instructs the conservator (Prob C §1300(c));
- Grants letters of conservatorship (Prob C §1301(a));
- Fixes the residence of the conservatee outside California (Prob C §1301(b)); or
- Affects the legal capacity of the conservatee under Prob C §§1870-1901 (Prob C § 1301(e)).

An order granting temporary letters of conservatorship is not appealable. Prob C §1301(a). An order of this nature *should not purport to deprive the conservatee of rights on anything more than a temporary basis and thus does not adjudicate the matter in such a way that it makes it appealable as a matter of fairness or public policy*. In contrast, a judgment authorizing a conservator to consent to sterilization of a developmentally disabled conservatee *is not only appealable, but is automatically appealed by the conservatee*. Prob C § 1962(b)....

In addition, many orders are appealable under Prob C §§1300-1301 *because they finally adjudicate disputes regarding the management of the conservatorship estate or regarding other property rights*....

Furthermore, *most orders relating to the appointment or removal of the conservator are appealable*¹⁵

Applying those criteria, and general concepts of appealability, to the different types of UAGPPJA rulings listed above requires careful analysis. We discuss each type of ruling below.

15. California Conservatorship Practice *Appeals; Finality of Orders* § 24.3, pp. 1438-40 (Cal. Cont. Ed. Bar 2013).

Jurisdictional Rulings

The list of UAGPPJA rulings begins with two that are jurisdictional in nature:

- A ruling on whether a California court has jurisdiction of a conservatorship proceeding pending in the state.
- A ruling on whether a California court should decline to exercise its jurisdiction because a court of another state is a more appropriate forum.

The staff believes that **(1) the appealability of such rulings should depend on how the court rules, and (2) existing California law would satisfactorily accomplish that result.**

To explain this recommendation, it is necessary to examine how existing California law applies to a jurisdictional dispute in a conservatorship proceeding. Under existing law, if such a dispute arises and the court determines that it lacks jurisdiction of the proceeding, the court will enter an order of dismissal and that order will constitute an appealable judgment.¹⁶ In contrast, if the court decides that it *has* jurisdiction, that ruling, by itself, does not appear to be appealable.¹⁷ Allowing an appeal of the jurisdictional ruling alone would be contrary to the policy against piecemeal adjudication of disputes.¹⁸ However, sooner or later the probate court will make an appealable ruling in the proceeding (e.g., the appointment of a conservator¹⁹), in which case the jurisdictional issue could be reviewed as part of any appeal from the appealable ruling.²⁰ Alternatively, a party could seek discretionary writ review of the jurisdictional ruling.²¹

That approach to the appealability of a jurisdictional ruling makes sense, and there would be no reason to change it for purposes of the UAGPPJA rulings in question. **Existing law is sufficient to accomplish that result; no statutory revision appears necessary to implement the staff's recommendation on this point.**

Acquisition of Jurisdiction Because of Unjustifiable Conduct

Under the Commission's proposed version of UAGPPJA, a court might also rule on whether it acquired jurisdiction to appoint a conservator because of

16. Code Civ. Proc. §§ 581d, 904.1(a)(1).

17. See generally Code Civ. Proc. § 904.1; Prob. Code §§ 1300, 1301.

18. See generally 9 B. Witkin, California Procedure *Appeal* § 96, pp. 158-59 (5th ed. 2008).

19. See Section 1301(a).

20. See generally 9 B. Witkin, *supra* note 17, at *Appeal* § 89, p. 150.

21. California Civil Appellate Practice *Appealable Judgments and Orders* § 3.4, p. 168 (Cal. Cont. Ed. Bar 2013).

unjustifiable conduct, and, if so, what action to take in response. Specifically, proposed Section 1997 would provide:

1997. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a conservator because of unjustifiable conduct, the court may do any of the following:

(1) Decline to exercise jurisdiction.

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the conservatee or proposed conservatee or the protection of the property of the conservatee or proposed conservatee or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate is filed in a court of another state having jurisdiction.

(3) Continue to exercise jurisdiction after considering all of the following:

(A) The extent to which the conservatee or proposed conservatee and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subdivision (c) of Section 1996.

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 1993.

(b) If a court of this state determines that it acquired jurisdiction to appoint a conservator because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, medical examination expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than this chapter.

A ruling under this provision would finally adjudicate whether one or more persons engaged in unjustifiable conduct in handling a conservatorship proceeding, and the consequences of such conduct if the court finds that it occurred. It is analogous to a ruling on a request for sanctions against a party or an attorney for failure to provide discovery or other misconduct in handling a lawsuit. **With regard to appealability, it seems advisable to treat both of these types of rulings the same way.**

Under Code of Civil Procedure Section 904.1, the appealability of a sanctions ruling depends on whether the court awards sanctions in an amount exceeding \$5,000:

904.1. (a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

....

(11) From an interlocutory judgment directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

(12) From an order directing payment of monetary sanctions by a party or an attorney for a party if the amount exceeds five thousand dollars (\$5,000).

....

(b) Sanction orders or judgments of five thousand dollars (\$5,000) or less against a party or an attorney for a party may be reviewed on an appeal by that party after entry of final judgment in the main action, or, at the discretion of the court of appeal, may be reviewed upon petition for an extraordinary writ.

If the court dismisses the case as a sanction, then the dismissal is appealable regardless of whether the court also awards monetary sanctions.²²

Similarly,

- **An order assessing expenses against a party pursuant to proposed Section 1997 should be appealable if the assessed expenses exceed \$5,000.** At the end of this discussion of appealability, the staff presents some statutory language to accomplish that result.
- **If the assessed expenses are \$5,000 or less, that award, by itself, would not warrant immediate review.** The Commission does not need to do anything to achieve that result; under existing law, an interlocutory order is not appealable absent specific authority for an appeal. However, because Code of Civil Procedure Section 904.1(b) specifically addresses sanctions of \$5,000 or less, it might be helpful to include similar language regarding assessed expenses. The staff has included such language in the proposed legislation at the end of this discussion of appealability.
- **If the court declines to exercise conservatorship jurisdiction due to unjustifiable conduct, that ruling should be appealable regardless of whether the court assesses any expenses.** The Commission does not need to do anything to achieve that result;

22. See Code Civ. Proc. §§ 581d, 904.1(a)(1).

such a step would result in dismissal of the proceeding, and the dismissal order would constitute an appealable judgment.²³

Petition to Transfer a Conservatorship From California to Another State

Proposed Section 2001 would govern a petition to transfer a conservatorship from California to another state. It provides that if certain requirements are met, a California court must issue an order provisionally granting such a petition and directing the petitioner to seek acceptance of the conservatorship in the other state.²⁴ Upon satisfaction of additional requirements (including receipt of an order in which the other state provisionally accepts the conservatorship), the California court “shall issue a final order confirming the transfer and terminating the conservatorship”²⁵

If a court issues a final order confirming a transfer and terminating a conservatorship, the California proceeding will be over and the court will enter a final judgment, which will be appealable.²⁶ **That result seems appropriate and no statutory revision appears necessary to achieve it.**

An order *denying* a petition to transfer a conservatorship should also be appealable, regardless of whether the denial occurs when requesting a provisional order to transfer, or when seeking a final order confirming a transfer. Such a decision amounts to a ruling on a conservatorship appointment: It results in retention of an existing appointment rather than permitting a new appointment in another state. Consequently, a court might conclude that such a ruling falls within the scope of Section 1301(a), authorizing an appeal from an order on “[g]ranted or revoking of letters of ... conservatorship.” To eliminate any uncertainty about appealability, however, **it would be helpful to expressly state that this type of order is appealable.** At the end of this discussion of appealability, the staff presents some statutory language to accomplish that result.

In contrast, **an order *provisionally granting* a petition to transfer a conservatorship should *not* be appealable.** A party should not be entitled to contest the transfer at the appellate level until the probate court decides whether to issue a final order confirming the transfer and terminating the conservatorship. An earlier appeal would be premature. **The Commission does**

23. See Code Civ. Proc. §§ 581d, 904.1(a)(1).

24. Proposed Section 2001(d)-(f).

25. Proposed Section 2001(g).

26. See Code Civ. Proc. § 904.1; Prob. Code § 1863.

not need to do anything to achieve the desired result; under existing law, an interlocutory order is not appealable absent specific authority for an appeal.

Petition to Transfer a Conservatorship to California From Another State

Proposed Section 2002 would govern a petition to transfer a conservatorship (or a similar proceeding by another name) from another state to California. It provides that if certain requirements are met, a California court must issue an order provisionally granting such a petition.²⁷ The court would then have to do the following no later than 60 days after issuance of that order:

- Review the conservatorship as provided in proposed Section 1851.1.²⁸
- Determine whether and, if so, how the conservatorship needs to be modified to conform to California law.²⁹

The court could not issue a final order accepting the transfer until after it completed those steps *and* it received a final order from the out-of-state court approving the transfer.³⁰

A final order *accepting* a transfer would entail the appointment of a conservator in California. Consequently, **such an order should be appealable.** To eliminate any uncertainty about that matter, **it would be helpful to expressly state that a final order accepting a transfer and appointing a California conservator is appealable.**

If a court *denies* a petition to transfer a conservatorship to California (either by refusing to provisionally grant the petition, or by refusing to enter a final order accepting the transfer and appointing a California conservator), the California proceeding will be over and the court could enter an order of dismissal, which would constitute an appealable judgment.³¹ **That result seems appropriate and no statutory revision appears necessary to achieve it.**

In contrast, **an order provisionally granting a petition to transfer a conservatorship to California should not be appealable.** A party should not be entitled to contest the transfer at the appellate level until the probate court decides whether to issue a final order accepting the transfer and appointing a conservator. An earlier appeal would be premature. **The Commission does not**

27. Proposed Section 2002(f).

28. Proposed Section 2002(h)(2).

29. Proposed Section 2002(h)(1).

30. See proposed Section 2002(i)(1); see also Memorandum 2013-56, pp. 8-10.

31. Code Civ. Proc. § 581d.

need to do anything to achieve the desired result; under existing law, an interlocutory order is not appealable absent specific authority for an appeal.

Similarly, the staff recommends that **neither a ruling in connection with the required conservatorship review, nor a determination on whether and how to modify the conservatorship to conform to California law, should be appealable.** Rather, such rulings should not be reviewable (except by a discretionary writ) until the court has determined whether to issue a final order accepting the transfer and appointing a conservator. To eliminate any uncertainty about this matter, **it would be helpful to state as much expressly.** The staff has included such language in the proposed legislation at the end of this discussion of appealability.

Enforcement of a Registered Conservatorship Order

Proposed Sections 2011-2014 would permit registration of an out-of-state conservatorship in California. Upon such registration, the out-of-state conservator would, while the conservatee resides outside California, be allowed to exercise in California “all powers authorized in the order of appointment except as prohibited under the laws of [California].”³² When acting pursuant to registration, the out-of-state conservator would be subject to California law governing the action, including, but not limited to, all applicable procedures.³³ A California court could grant any relief available under California law to enforce a registered conservatorship order.³⁴

Are any statutory revisions needed to address the appealability of a court decision on whether and how to enforce a conservatorship registration? As explained below, **the staff does not think so.**

If an out-of-state conservator acts, or attempts to act, pursuant to registration, and the conservator or another person petitions a court to allow or disallow such action, the court could do the following:

- *Treat the registration as effective, and decide the underlying matter on the merits.* In this set of circumstances, the fact that the out-of-state conservator is acting pursuant to registration should have no effect on the appealability of the court’s determination. Existing law governing the appealability of that determination would therefore be sufficient to reach the proper result.

32. Proposed Section 2014.

33. *Id.*

34. *Id.*

- *Treat the registration as ineffective.* If the court treats the registration as ineffective, that would dispose of the petition. The court could enter a final judgment, which would be appealable under existing law.

In each set of circumstances described above, existing law would be sufficient to achieve the appropriate result. Thus, **no statutory revisions appear necessary to address the appealability of a court decision on whether and how to enforce a conservatorship registration.**

Third Party Reliance on a Conservatorship Registration

Proposed Section 2015 would specify certain conditions under which a third person who acts in good faith reliance on a conservatorship registration would not be liable for so acting. A court ruling on whether a person may invoke this protection would necessarily arise in a dispute over liability. There does not appear to be any need to create a special rule regarding the appealability of such a ruling; it should be subject to appellate review at the same time as the rest of the dispute. **No statutory revisions appear necessary to address the appealability of a court decision on whether a person acted in good faith reliance on a conservatorship registration.**

Proposed New Provision Combining the Staff's Recommendations

The staff's recommendations relating to appealability could be implemented by **adding a new provision to the Probate Code, along the following lines:**

Prob. Code § 1301.5 (added). Appeals under California Conservatorship Jurisdiction Act

SEC. _____. Section 1301.5 is added to the Probate Code, to read:

1301.5 The following rules apply with respect to the California Conservatorship Jurisdiction Act, Chapter 8 (commencing with Section 1980) of Part 4:

(a)(1) An appeal may be taken from an order assessing expenses against a party under Section 1997 if the amount exceeds five thousand dollars (\$5,000).

(2) An order under Section 1997 assessing expenses of five thousand dollars (\$5,000) or less against a party may be reviewed on an appeal by that party after entry of a final judgment or an appealable order in the conservatorship proceeding. At the discretion of the court of appeal, that type of order may also be reviewed upon petition for an extraordinary writ.

(b) An appeal may be taken from an order under Section 2001 denying a petition to transfer a conservatorship to another state.

(c) An appeal may be taken from a final order under Section 2002 accepting a transfer and appointing a conservator in this state.

(d) Notwithstanding any other law, an appeal may not be taken from either of the following until the court enters a final order under Section 2002 accepting the proposed transfer and appointing a conservator in this state:

(1) An order under Section 2002 determining whether or how to conform a conservatorship to the law of this state.

(2) An order that is made pursuant to a court review under Sections 1851.1 and 2002.

Comment. Section 1301 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Paragraph (1) of subdivision (a) is modeled on Code of Civil Procedure Section 904.1(a)(12). Paragraph (2) is modeled on Code of Civil Procedure Section 904.1(b).

Subdivision (b) makes clear that an order *denying* a petition to transfer a conservatorship to another state is appealable. An order *provisionally granting* such a petition is not appealable. If a court issues a *final* order granting a transfer to another state, the court will terminate the conservatorship and enter a final judgment, which will be appealable. See Code Civ. Proc. § 904.1.

Subdivision (c) makes clear that a *final* order accepting a transfer of a conservatorship is appealable. See also Section 1301(a) (order granting letters of conservatorship is appealable). In contrast, an order *provisionally granting* a petition to transfer a conservatorship to California is not appealable. If a court *denies* such a petition, the California proceeding will be over and the court will enter an order of dismissal, which will be appealable. See Code Civ. Proc. §§ 581d, 904.1.

Subdivision (d) makes clear that a conformity determination under Section 2002 is not appealable until the court issues a final order accepting the transfer and appointing a California conservator. The same is true of an order that is made pursuant to a court review under Sections 1851.1 and 2002.

Comments on this proposed new provision would be particularly helpful.

NEXT STEPS

When it approved a final recommendation on UAGPPJA in December, the Commission decided that upon approval of any additional conforming revisions, it would either incorporate them into the same recommendation or prepare a supplemental recommendation.³⁵ As yet, the staff has not submitted the final recommendation to the printer. Thus, if the Commission approves any of the

35. Minutes (Dec. 2013), p. 12.

additional conforming revisions recommended in this memorandum, it would still be possible and probably desirable to incorporate them into that recommendation. Unless the Commission otherwise instructs, **the staff will take that step and will also seek to have the additional conforming revisions incorporated into the bill that would implement the Commission's recommendation.**

At this point, the staff has already invested significant resources in searching the codes for provisions that will require conforming revisions. Due to time constraints and competing priorities, our work has not been exhaustive. There might still be additional provisions that will require adjustment upon enactment of the proposed California Conservatorship Jurisdiction Act.

Fortunately, the proposed legislation has a one-year deferred operative date (i.e., if enacted, it will become operative on January 1, 2016, not on January 1, 2015). Thus, there is still ample time to prepare conforming revisions and seek their enactment before the operative date. **We strongly encourage stakeholders and other interested persons to look for, and alert the Commission to, any additional conforming revisions that might be needed before the law becomes operative.** Unless the Commission otherwise instructs, the staff does not plan to invest any further time searching the codes for provisions that require adjustment.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

PROBATE CODE §§ 1840-1844

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in Article 3 (commencing with Section 1820).

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822 or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee's spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

1843. No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

1844. (a) An official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

PROBATE CODE §§ 1845-1849.5

1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820).

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.

(b) The time and circumstance of the person's disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the whereabouts of the missing person is unknown to those persons and to the petitioner.

(c) The last known residence of the missing person.

(d) A description of any search or inquiry made concerning the whereabouts of the missing person.

(e) A description of the estate of the proposed conservatee which requires attention, supervision, and care.

1847. In addition to the persons and entities to whom notice of hearing is required under Section 1822, if the proposed conservatee is a person who is missing and whose whereabouts is unknown:

(a) A copy of the petition for appointment of a conservator and notice of the time and place of the hearing on the petition shall be mailed at least 15 days before the hearing to the proposed conservatee at the last known address of the proposed conservatee.

(b) Notice of the time and place of the hearing shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the proposed conservatee was last known to reside if the proposed conservatee's last known address is in this state.

(c) Pursuant to Section 1202, the court may require that further or additional notice of the hearing be given.

1848. In a proceeding to appoint a conservator of the estate of a person who is missing and whose whereabouts is unknown, the following acts are not required:

(a) Issuance of a citation to the proposed conservatee pursuant to Section 1823.

(b) Service of a citation and petition pursuant to Section 1824.

(c) Production of the proposed conservatee at the hearing pursuant to Section 1825.

(d) Performance of the duties of the court investigator pursuant to Section 1826.

(e) Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

1849.5. (a) A petition may be filed under this article regardless of when the proposed conservatee became missing or how long the proposed conservatee has been missing.

(b) If a trustee was appointed pursuant to former Section 262, repealed by Chapter 201 of the Statutes of 1983, the provisions of former Sections 260 to 272, inclusive, repealed by Chapter 201 of the Statutes of 1983, continue to apply to the case after December 31, 1983, unless, upon a petition filed under this article after December 31, 1983, the trustee is replaced by a conservator.

PROBATE CODE §§ 2500-2507

2500. (a) Unless this article or some other applicable statute requires court authorization or approval, if it is to the advantage of the estate, the guardian or conservator may do any of the following without court authorization, instruction, approval, or confirmation:

(1) Compromise or settle a claim, action, or proceeding by or for the benefit of, or against, the ward or conservatee, the guardian or conservator, or the estate, including the giving of a covenant not to sue.

(2) Extend, renew, or in any manner modify the terms of an obligation owing to or running in favor of the ward or conservatee or the estate.

(b) Nothing in this section precludes the guardian or conservator from seeking court authorization, instructions, approval, or confirmation pursuant to Section 2403.

(c) Upon petition of the ward or conservatee, a creditor, or any interested person, or upon the court's own motion, the court may limit the authority of the guardian or conservator under subdivision (a). Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2501. (a) Except as provided in subdivision (b), court approval is required for a compromise, settlement, extension, renewal, or modification which affects any of the following:

(1) Title to real property.

(2) An interest in real property or a lien or encumbrance on real property.

(3) An option to purchase real property or an interest in real property.

(b) If it is to the advantage of the estate, the guardian or conservator without prior court approval may extend, renew, or modify a lease of real property in either of the following cases:

(1) Where under the lease as extended, renewed, or modified the rental does not exceed five thousand dollars (\$5,000) a month and the term does not exceed two years.

(2) Where the lease is from month to month, regardless of the amount of the rental.

(c) For the purposes of subdivision (b), if the lease as extended, renewed, or modified gives the lessee the right to extend the term of the lease, the length of the term shall be considered as though the right to extend had been exercised.

2502. Court approval is required for a compromise or settlement of a matter when the transaction requires the transfer or encumbrance of property of the estate, or the creation of an unsecured liability of the estate, or both, in an amount or value in excess of twenty-five thousand dollars (\$25,000).

2503. Court approval is required for any of the following:

(a) A compromise or settlement of a claim by the ward or conservatee against the guardian or conservator or against the attorney for the guardian or conservator, whether or not the claim arises out of the administration of the estate.

(b) An extension, renewal, or modification of the terms of a debt or similar obligation of the guardian or conservator, or of the attorney for the guardian or conservator, owing to or running in favor of the ward or conservatee or the estate.

2504. Court approval is required for the compromise or settlement of any of the following:

(a) A claim for the support, maintenance, or education of (1) the ward or conservatee, or (2) a person whom the ward or conservatee is legally obligated to support, maintain, or educate, against any other person (including, but not limited to, the spouse or parent of the ward or the spouse, domestic partner, parent, or adult child of the conservatee).

(b) A claim of the ward or conservatee for wrongful death.

(c) A claim of the ward or conservatee for physical or nonphysical harm to the person.

2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

(1) The court in which the guardianship or conservatorship proceeding is pending.

(2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.

(3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

(1) The court in which the action or proceeding is pending.

(2) The court in which the guardianship or conservatorship proceeding is pending.

2506. Where approval of the court in which the guardianship or conservatorship proceeding is pending is required under this article, the guardian or conservator shall file a petition with the court showing the advantage of the compromise, settlement, extension, renewal, or modification to the ward or conservatee and the

estate. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

2507. Notwithstanding Sections 2500 to 2506, inclusive:

(a) Whenever another statute requires, provides a procedure for, or dispenses with court approval of a compromise, settlement, extension, renewal, or modification, the provisions of that statute govern any case to which that statute applies.

(b) Whenever another statute provides that a compromise or settlement of an administrative proceeding is not valid unless approved in such proceeding, the approval is governed by that statute, and approval in the guardianship or conservatorship proceeding is not required.