

Memorandum 2014-12

2014 Legislative Program (Status Report)

The attached table summarizes the status of the Commission's¹ 2014 legislative program. The staff will supplement that information orally, if necessary, at the upcoming meeting.

A few issues relating to SB 940 (Jackson) are discussed below.

SB 940 (Jackson). California Conservatorship Jurisdiction Act

Senate Bill 940 (Jackson) would implement the Commission's recommendation on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). It would enact the California Conservatorship Jurisdiction Act, a version of UAGPPJA modified to conform to California terminology, protect California policies, and meet California's needs.

Status of the Bill

The Senate Judiciary Committee unanimously passed the bill at a hearing last week. The bill is now pending in the Senate Appropriations Committee.

There is no known opposition to the bill. However, the State Bar Trusts and Estate Section has taken a "support, if amended" position. The group would like the bill amended to:

- (1) Provide an opportunity to object to a conservatorship registration, require the conservator to inform people of the opportunity to object, and require court approval of the registration if anyone objects to it.
- (2) Impose a 120-day time limit on the effectiveness of a conservatorship registration.

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.

The Judicial Council and the California Judges Association (“CJA”) have expressed less-specific concern about the registration process, but have not yet taken a formal position on the bill. In addition, the California Association of Public Administrators, Public Guardians, and Public Conservators (“CAPAPGPC”) has expressed some concern about how courts have been using public conservators and whether the bill would increase the workload of public conservators.

The author, her staff, and Commission staff have been working with all of these groups in an effort to resolve their concerns. If needed, Commission staff will contact the Chair of the Commission to discuss these matters between Commission meetings. As yet, such discussion would be premature, because we are still waiting to learn the positions of the Judicial Council and CJA.

Status of the Commission’s Recommendation

The Commission’s recommendation on UAGPPJA has been sent to the printer for publication. In preparing that report for publication, the staff made various technical and editorial revisions “where necessary to conform to the Commission’s policy decisions or to correct technical defects.” CLRC Handbook Rule 2.7.4.

Of particular note, we revised two examples that might have caused some confusion due to the proposed provision rendering a conservatorship registration ineffective when the conservatee becomes a California resident.² Specifically, we revised a paragraph in the preliminary part as follows:

The proposed legislation would specifically make clear that if a California law “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. For example, ~~if a conservatorship was registered in California and the conservator wished to place the conservatee in a secured facility for dementia patients, the conservator could not do so~~ a conservator who is registered in California could not authorize the administration of dementia medication to a conservatee located within this state without fulfilling California’s special requirements for taking that step.

2. Proposed Prob. Code § 2014(c).

Similarly, we revised the Comment to proposed Probate Code Section 2014 to delete references to two statutes that relate primarily to determining the appropriate residence of a conservatee within California:

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 seeks to exercise a power 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 ~~2353, 2352.5,~~ 2540(b), 2543, 2591.5).

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If the Commission has any concerns about these revisions, we may still be able to make changes to the page proofs.

Proposed Amendment of Probate Code Section 2352

The Commission’s recommendation includes a conforming revision of subdivision (d) of Probate Code Section 2352. In preparing the recommendation for publication, the staff spotted a clear error in paragraph (e)(3) of the same code section, which we had not previously noticed: The provision requires “the guardian or conservatee” to “set forth the basis for the emergency” in a notice of the guardian or conservator’s intention to change the residence of a ward or conservatee. Instead of requiring “the guardian or *conservatee*” to set forth the basis for the emergency, the provision should require “the guardian or *conservator*” to do so. Otherwise, the provision does not make any sense.

That problem could be corrected by revising Probate Code Section 2352(e)(3) as follows:

- (3) If the guardian or conservator proposes to remove the ward or conservatee from his or her personal residence, except as provided by subdivision (c), the guardian or conservator shall mail a notice of his or her intention to change the residence of the ward

or conservatee to all persons entitled to notice under subdivision (b) of Section 1511 and subdivision (b) of Section 1822. In the absence of an emergency, that notice shall be mailed at least 15 days before the proposed removal of the ward or conservatee from his or her personal residence. If the notice is served less than 15 days prior to the proposed removal of the ward or conservatee, the guardian or ~~conservatee~~ conservator shall set forth the basis for the emergency in the notice. The guardian or conservator shall file proof of service of that notice with the court.

Does the Commission agree that this is an error that should be corrected in SB 940?

If so, then the Commission should revise its Comment to Section 2352, along the following lines:

Comment. Subdivision (d) of Section 2352 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Subdivision (e) is amended to replace an erroneous reference to “conservatee” with a reference to “conservator.”

Is this revised Comment acceptable to the Commission?

Severability Clause

SB 940 is a major bill that addresses several aspects of conservatorship jurisdiction. It occurred to the staff that it might be helpful to add a severability clause, along the following lines:

SEC. __. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application and to this end, the provisions of this act are severable.

Would the Commission like to recommend the addition of such a severability clause? If so, the staff will inform the author’s office and take appropriate steps to amend the bill if that revision is acceptable to her.

Respectfully submitted,

Brian Hebert
Executive Director

Status of 2014 Commission Legislative Program

As of April 2, 2014

| | | AB 1798 | AB ____ | | SB 940 | SCR 83 | | | | | |
|------------------------------------|------------------|----------------|---------|--|---------|---------|--|--|--|--|--|
| Introduced Last Amended | | 2/18/14 | | | 2/4/14 | 2/20/14 | | | | | |
| | | | | | 3/10/14 | | | | | | |
| First House | Policy Committee | <i>4/22/14</i> | | | 4/1/14 | 4/1/14 | | | | | |
| | Second Committee | | | | | | | | | | |
| | Passed House | | | | | | | | | | |
| Second House | Policy Committee | | | | | | | | | | |
| | Second Committee | | | | | | | | | | |
| | Passed House | | | | | | | | | | |
| Concurrence | | | | | | | | | | | |
| Governor | Received | | | | | | | | | | |
| | Approved | | | | | | | | | | |
| Secretary of State | Date | | | | | | | | | | |
| | Chapter # | | | | | | | | | | |

Bill List: AB 1798 (Committee on Public Safety): Deadly Weapons
 AB ____ (Committee on Judiciary): Technical Corrections

SB 940 (Jackson): California Conservatorship Jurisdiction Act (UAGPPJA)
 SCR 83 (Monning): Resolution of Authority

KEY _____

Italics: Future or speculative
 “—”: Not applicable
 *: Double referral, not fiscal
 [date]: Deadline