
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
APRIL 11, 2013
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on April 11, 2013.

Commission:

Present: Damian Capozzola, Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Judge Patricia Cowett (ret.)
Taras Kihiczak
Victor King
Senator Ted Lieu
Crystal Miller-O'Brien

Absent: Xochitl Carrion, Chairperson
Assembly Member Roger Dickinson
Susan Duncan Lee

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel
Alexander Rich, Legal Extern
Amanda Smith, Legal Extern

Consultants: None

Other Persons:

Thomas Gibson, Department of Fish and Wildlife
Alex Graves, Alzheimer's Association
Jacquelyn Paige, AARP
Jennifer Wilkerson, State Bar Trusts and Estates Section, Executive Committee

CONTENTS	
Minutes of February 7, 2013, Commission Meeting	2
Administrative Matters.....	2
Report of Executive Director.....	2
New Topics and Priorities	2
Legislative Program.....	2
Study H-855 — Statutory Clarification and Simplification of CID Law.....	3
Study H-858 — Commercial and Industrial Subdivisions	3
Study L-750 — Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.....	3
Study M-301 — Deadly Weapons: Minor Clean-Up Issues	11
Study R-100 — Fish and Game Law	11
Study T-100 & T-103 — Technical and Minor Substantive Statutory Corrections.....	12

1 MINUTES OF FEBRUARY 7, 2013, COMMISSION MEETING

2 The Commission approved the Minutes of the February 7, 2013, Commission
3 meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Report of Executive Director**

6 The Executive Director reported on the following matter:

- 7 • The Minutes of the October 18, 2012 meeting contain an error. On
8 page 7, a reference to Memorandum 2012-44 should have been to
9 Memorandum 2012-41.

10 **New Topics and Priorities**

11 The memorandum on New Topics and Priorities, which will likely be
12 prepared for consideration at the Commission’s October or December meeting,
13 should discuss whether to study the conventions used by the Legislature in
14 numbering bills, specifically whether bill numbers should somehow indicate the
15 year or session of the bill’s introduction or enactment.

 LEGISLATIVE PROGRAM

16 The Commission considered Memorandum 2013-10 and its First Supplement,
17 reporting on the Commission’s 2013 legislative program.

18 In connection with Senate Bill 752 (Roth), the Commission approved all of the
19 amendments discussed in the First Supplement. The Commission also approved
20 the related Comment revisions for inclusion in a supplemental report.

1 STUDY H-855 — STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

2 The Commission considered Memorandum 2013-19, presenting a staff draft
3 recommendation on *Statutory Clarification and Simplification of CID Law (Further*
4 *Clean-Up Legislation)*.

5 The Commission approved the staff draft as a final recommendation, for
6 publication and submission to the Legislature, with one change: The content
7 relating to Civil Code Section 4070 was removed from the recommendation. The
8 staff will revisit that matter at a future meeting.

9 STUDY H-858 — COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

10 The Commission considered Memorandum 2013-20, presenting a staff draft
11 recommendation on *Commercial and Industrial Subdivisions*. The Commission
12 approved the draft for publication and submission to the Legislature, with one
13 change: The proposed law will delete the words “[t]he provisions of” from
14 Business and Professions Code Section 11010.3.

15 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
16 PROTECTIVE PROCEEDINGS JURISDICTION ACT

17 The Commission considered Memorandum 2013-14, Memorandum 2013-15,
18 and the First, Second, and Third Supplements to Memorandum 2013-15, relating
19 to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act
20 (“UAGPPJA”). The Commission also considered a two-page document from
21 Jennifer Wilkerson of the State Bar Trusts and Estates Section Executive
22 Committee, which is attached to the Fourth Supplement to Memorandum 2013-
23 15.

24 The Commission made the following decisions:

25 **Adult with a Developmental Disability (Proposed Prob. Code § 1981(c))**

26 For purposes of a tentative recommendation, proposed Probate Code Section
27 1981(c) is acceptable as presented in the draft attached to Memorandum 2013-15.

28 **Federally Recognized Indian Tribe (Proposed Prob. Code § 1982(m))**

29 The reference to “a federally recognized Indian tribe” in proposed Probate
30 Code Section 1982(m) should be placed in brackets:

1 (m) Notwithstanding Section 74, “State” means a state of the
2 United States, the District of Columbia, Puerto Rico, the United
3 States Virgin Islands, [a federally recognized Indian tribe], or any
4 territory or insular possession subject to the jurisdiction of the
5 United States.

6 The tentative recommendation should include a “Note” on proposed Probate
7 Code Section 1982, along the following lines:

8 **Note.** The Commission seeks comment on any aspect of
9 proposed Section 1982, but would especially appreciate input on
10 whether to include a federally recognized Indian tribe in the
11 definition of “State” and, if not, what alternative treatment would
12 be appropriate.

13 The Commission is aware of Senate Bill 406 (Evans), which
14 would enact the Tribal Court Civil Judgment Act. The Commission
15 is also aware that the California Tribal Court/State Court Forum
16 and the Probate and Mental Health Advisory Committee of the
17 Judicial Council are jointly studying recognition of tribal judgments
18 and orders in proceedings that would, if conducted in a California
19 court, be brought in the Probate Division.

20 The Commission’s tentative inclination is to postpone decision
21 on whether to include a federally recognized Indian tribe in the
22 definition of “State.” Once the fate of SB 406 is decided and the joint
23 study is complete (or at least well underway), it might be easier to
24 decide how to proceed on this point.

25 In addition, the Commission has tentatively decided that the
26 UAGPPJA legislation should have a delayed operative date, to
27 allow the Judicial Council to develop rules and forms. See
28 proposed Section 2114. It might be possible to resolve and address
29 the tribal issues during the transitional year, after UAGPPJA is
30 enacted but before it becomes operative.

31 For these reasons, the reference to “a federally recognized
32 Indian tribe” is shown in brackets in proposed Section 1982(m). The
33 Commission encourages comments on these matters.

34 **Communication and Cooperation Between Courts (Proposed Prob. Code §§**
35 **1984, 1985)**

36 For purposes of a tentative recommendation, proposed Probate Code Sections
37 1984 and 1985 are acceptable as presented in the draft attached to Memorandum
38 2013-15.

39 **Exclusive Jurisdiction (Proposed Prob. Code § 1992; Prob. Code § 2200)**

40 Proposed Probate Code Section 1992 is acceptable as presented in the draft
41 attached to Memorandum 2013-15.

1 To alert people to UAGPPJA’s jurisdictional rules, Probate Code Section 2200
2 should be amended to include a “signpost provision,” as follows:

3 **§ 2200 (amended). Jurisdiction**

4 2200. (a) The superior court has jurisdiction of guardianship and
5 conservatorship proceedings.

6 (b) Chapter 8 (commencing with Section 1980) of Part 3 governs
7 which state has jurisdiction of a conservatorship proceeding.

8 **Comment.** Section 2200 is amended to direct attention to the
9 jurisdictional provisions in the California Conservatorship
10 Jurisdiction Act (Section 1980 *et seq.*).

11 **Declining to Exercise Jurisdiction (Proposed Prob. Code §§ 1993, 1996, 1997)**

12 Proposed Probate Code Section 1993 and the accompanying Comment should
13 be revised along the following lines:

14 **§ 1993. Jurisdiction [UAGPPJA § 203]**

15 1993.

16 (c) A court of this state has jurisdiction to appoint a conservator
17 for a proposed conservatee if, on the date the petition is filed, this
18 state is a significant-connection state and a court of the proposed
19 conservatee’s home state has expressly declined to exercise
20 jurisdiction because this state is a more appropriate forum.

21

22 (e) A court of this state has jurisdiction to appoint a conservator
23 for a proposed conservatee if all of the following conditions are
24 satisfied:

25 (1) This state does not have jurisdiction under subdivision (a),
26 (b), (c), or (d).

27 (2) The proposed conservatee’s home state and all significant-
28 connection states have expressly declined to exercise jurisdiction
29 because this state is the more appropriate forum.

30 (3) Jurisdiction in this state is consistent with the constitutions
31 of this state and the United States.

32

33 **Comment.** Section 1993 is similar to Section 203 of the Uniform
34 Adult Guardianship and Protective Proceedings Jurisdiction Act
35 (2007) (“UAGPPJA”). Revisions have been made to follow local
36 drafting practices and conform to California terminology for the
37 proceedings in question. See Section 1982 & Comment (definitions);
38 see also Section 1980 Comment.

39

40 Subdivisions (b) and (c), relating to jurisdiction in a significant-
41 connection state, correspond to Section 203(2)(A) of UAGPPJA.
42 Revisions have been made to emphasize that a court may not be
43 deemed to have “declined jurisdiction” unless the court has
44 expressly taken that step.

1
2 Subdivision (e), relating to jurisdiction in a state that is neither
3 the home state nor a significant-connection state, corresponds to
4 Section 203(3) of UAGPPJA. Revisions have been made to
5 emphasize that a court may not be deemed to have “declined
6 jurisdiction” unless the court has expressly taken that step.

7
8 See Section 1991(a) (defining “home state” & “significant-
9 connection state”). For limitations on the scope of this chapter, see
10 Section 1981 & Comment.

11 Proposed Probate Code Section 1996 and the accompanying Comment should
12 be revised along the following lines:

13 **§ 1996. Appropriate forum [UAGPPJA § 206]**

14 1996. (a) A court of this state having jurisdiction under Section
15 1993 to appoint a conservator may decline to exercise its
16 jurisdiction if it determines at any time that a court of another state
17 is a more appropriate forum.

18 (b) If a court of this state declines to exercise its jurisdiction
19 under subdivision (a), it shall either dismiss or stay the proceeding.
20 The court’s order dismissing or staying the proceeding shall be in a
21 record and shall expressly state that the court declines to exercise
22 its jurisdiction because a court of another state is a more
23 appropriate forum. The court may impose any condition the court
24 considers just and proper, including the condition that a petition
25 for the appointment of a conservator of the person, conservator of
26 the estate, or conservator of the person and estate be filed promptly
27 in another state.

28 (c) In determining whether it is an appropriate forum, the court
29 shall consider all relevant factors, including

30 **Comment.** Section 1996 is similar to Section 206 of the Uniform
31 Adult Guardianship and Protective Proceedings Jurisdiction Act
32 (2007) (“UAGPPJA”). Revisions have been made to conform to
33 California terminology for the proceedings in question. See Section
34 1982 & Comment (definitions); see also Section 1980 Comment.
35 Revisions have also been made to require a court to prepare a
36 record when it declines to exercise its jurisdiction, which expressly
37 states that the court is taking that step. A person can present that
38 record when seeking jurisdiction in another state.

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

41 The Commission discussed but did not resolve whether to make further
42 revisions of proposed Section 1996 as suggested in the document that Ms.
43 Wilkerson provided at the meeting (see Fourth Supplement to Memorandum

1 2013-15). The staff should analyze that issue for the next meeting, so that the
2 Commission can revisit it with the benefit of the staff's analysis.

3 **Special Jurisdiction (Proposed Prob. Code §§ 1991(a)(1), 1994)**

4 Proposed Probate Code Section 1994 and the accompanying Comment should
5 be revised along the following lines:

6 **§ 1994. Special jurisdiction [UAGPPJA § 204]**

7 1994. (a) A court of this state lacking jurisdiction under
8 subdivisions (a) to (e), inclusive, of Section 1993 has special
9 jurisdiction to do any of the following:

10 (1) Appoint a temporary conservator of the person in an
11 emergency ~~for a term not exceeding [90] days~~ for a proposed
12 conservatee who is physically present in this state. In making an
13 appointment under this paragraph, a court shall follow the
14 procedures specified in Chapter 3 (commencing with Section 2250)
15 of Part 4. The temporary conservatorship shall terminate in
16 accordance with Section 2257.

17 (2) Appoint a conservator of the estate with respect to real or
18 tangible personal property located in this state.

19 (3) Appoint a conservator of the person, conservator of the
20 estate, or conservator of the person and estate for a proposed
21 conservatee for whom a provisional order to transfer a proceeding
22 from another state has been issued under procedures similar to
23 Section 2001.

24 (b) If a petition for the appointment of a conservator of the
25 person in an emergency is brought in this state and this state was
26 not the home state of the proposed conservatee on the date the
27 petition was filed, the court shall dismiss the proceeding at the
28 request of the court of the home state, if any, whether dismissal is
29 requested before or after the emergency appointment of a
30 conservator of the person.

31 **Comment.** Section 1994 is similar to Section 204 of the Uniform
32 Adult Guardianship and Protective Proceedings Jurisdiction Act
33 (2007) ("UAGPPJA"). Revisions have been made to conform to
34 California terminology for the proceedings in question. See Section
35 1982 & Comment (definitions); see also Section 1980 Comment.
36 Revisions have also been made to specify the procedure for making
37 an emergency appointment under paragraph (a)(1).

38 See Section 1991(a) (defining "emergency" & "home state"). For
39 limitations on the scope of this chapter, see Section 1981 &
40 Comment.

41 It should not be necessary to seek a permanent conservatorship every time a
42 person seeks a temporary conservatorship pursuant to proposed Section

1 1994(a)(1). The temporary conservatorship provisions should be revised
2 accordingly (see Memorandum 2013-9, Attachment pp. 54-57).

3 In preparing conforming revisions for inclusion in the next draft, the staff
4 should consider the interplay between proposed Section 1996 and the procedure
5 provided in Probate Code Sections 3200-3210 (capacity determinations and
6 health care decisions for adult without conservator).

7 **Accepting a Conservatorship Transferred From Another State (Proposed Prob.**
8 **Code § 2002)**

9 Proposed Probate Code Section 2002(a)(3) should be revised to read:

10 (3) On the first page of the petition, the petitioner must state
11 that the conservatorship is eligible for transfer and does not fall
12 within the limitations of Section 1981.

13 Proposed Probate Code Section 2002(c)(2) should be deleted and conforming
14 revisions should be made in the accompanying Comment.

15 Proposed Probate Code Section 2002 (e) and the accompanying Comment
16 should be revised along the following lines:

17 (e)(1) The court shall issue a final order accepting the
18 proceeding and appointing the conservator as a conservator of the
19 person, a conservator of the estate, or a conservator of the person
20 and estate in this state upon its receipt from the court from which
21 the proceeding is being transferred of a final order issued under
22 provisions similar to Section 2001 transferring the proceeding to
23 this state. In appointing a conservator under this paragraph, the
24 court shall comply with ~~Sections 1830 and 1835~~ Section 1830.

25 (2) A transfer to this state does not become effective unless and
26 until the court issues a final order under paragraph (1). A
27 conservator may not take action in this state pursuant to a transfer
28 petition unless and until the transfer becomes effective and all of
29 the following steps have occurred:

30 (A) The conservator has taken an oath in accordance with
31 Section 2300.

32 (B) The conservator has filed the required bond, if any.

33 (C) The court has provided the information required by Section
34 1835 to the conservator.

35 (D) The conservator has filed an acknowledgement of receipt as
36 required by Section 1834.

37 (E) The clerk of the court has issued the letters of
38 conservatorship.

39 (3) When a transfer to this state becomes effective, the
40 conservatorship is subject to the law of this state and shall
41 thereafter be treated as a conservatorship under the law of this
42 state.

1 (4) When it issues a final order under paragraph (1), the court
2 shall appoint a court investigator under Section 1454, who shall
3 promptly commence an investigation under Section 1851.1.

4 **Comment...**

5 Paragraph (1) of subdivision (e) corresponds to Section 302(e) of
6 UAGPPJA. A second sentence is included to make clear that ~~(4)~~ a
7 final order accepting a proceeding and appointing the conservator
8 to serve in California must meet the same requirements as an order
9 appointing a conservator in a proceeding that originates in
10 California, ~~and (2) a court must provide the same written~~
11 ~~information to the conservator of a transferred conservatorship that~~
12 ~~it provides to the conservator of a conservatorship that originates in~~
13 ~~California.~~

14 Paragraph (2) of subdivision (e) makes clear that a transfer to
15 California does not become effective until the California court
16 enters a final order accepting the conservatorship and appointing
17 the conservator in California. Absent some other source of
18 authority (e.g., registration of the conservatorship under Article 4),
19 the conservator cannot begin to function here as such until the
20 transfer becomes effective and all five of the enumerated follow-up
21 steps have occurred.

22

23 **Effect of Registration (Proposed Prob. Code § 2014)**

24 Proposed Probate Code Section 2014 should be revised along the following
25 lines:

26 2014. (a) Upon registration of a conservatorship order from
27 another state, the conservator may, while the conservatee resides
28 out of this state, exercise in any county of this state all powers
29 authorized in the order of appointment except as prohibited under
30 the laws of this state, including maintaining actions and
31 proceedings in this state and, if the conservator is not a resident of
32 this state, subject to any conditions imposed upon nonresident
33 parties.

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

38 ~~(b)~~ (c) A court of this state may grant any relief available under
39 this chapter and other law of this state to enforce a registered order.

40 **Comment.** Subdivision (a) of Section 2014 is similar to Section
41 403(a) of the Uniform Adult Guardianship and Protective
42 Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have
43 also been made to:

1 (1) Conform to California terminology for the proceedings in
2 question. See Section 1982 & Comment (definitions); see also
3 Section 1980 Comment.

4 (2) Make clear that a registration is only effective while the
5 conservatee resides in another jurisdiction. If the conservatee
6 becomes a California resident, the conservator cannot act
7 pursuant to a registration under Section 2011, 2012, or 2013,
8 but can petition for transfer of the conservatorship to
9 California under Article 2.

10 (3) Emphasize that registration of an out-of-state
11 conservatorship in one county is sufficient; it is not
12 necessary to register in every county in which the
13 conservator seeks to act.

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

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

17 **Relationship to E-SIGN (Proposed Prob. Code § 2112)**

18 Proposed Probate Code Section 2112 (based on UAGPPJA § 502) should be
19 included in the tentative recommendation, as presented in the draft attached to
20 Memorandum 2013-15.

21 **Remaining Issues**

22 The Commission did not discuss the issues relating to the operative date
23 (Memorandum 2013-15, p. 31), investigation and review of a transferred
24 conservatorship (Memorandum 2013-15, pp. 32-33), grounds for removal
25 (Memorandum 2013-15, p. 34), and eligibility of an out-of-state conservator to act
26 pursuant to a registration in California (Third Supplement to Memorandum
27 2013-15). For purposes of the next draft, the staff should stick with the approach
28 to those issues used in the draft attached to Memorandum 2013-15. If someone
29 has concerns about the way any of these issues is treated in the next draft, that
30 person should bring the matter to the Commission's attention.

31 **Next Step**

32 For the next meeting, the staff should present a new draft of a tentative
33 recommendation, which incorporates the revisions discussed above, as well as
34 any necessary conforming changes.

1 STUDY M-301 — DEADLY WEAPONS: MINOR CLEAN-UP ISSUES

2 The Commission considered Memorandum 2013-17 and Memorandum 2013-
3 18, which discussed minor clean-up issues in the deadly weapon provisions of
4 the Penal Code. The Commission approved all of the staff recommendations in
5 those memoranda.

6 STUDY R-100 — FISH AND GAME LAW

7 The Commission considered Memorandum 2013-11 and its First and Second
8 Supplements, Memorandum 2013-12, and Memorandum 2013-13, which
9 presented material relating to the Commission’s study of Fish and Game law.

10 The Commission directed the staff to invite public participation in the study
11 by distributing a press release to relevant publications. The press release will
12 announce the study and provide information on how to participate in the study
13 process. The press release will also be provided to Commissioner Miller-O’Brien,
14 for distribution to local bar association organizations. The staff should also
15 directly invite the participation of the State Bar and California District Attorneys
16 Association.

17 The Commission approved the staff recommendations made in
18 Memorandum 2013-11, with one exception: The Commission did not approve the
19 recommended Division-level organization of the proposed code. Instead, the
20 Commission provisionally directed the staff to use an organization that would
21 blend the staff’s recommended organization with the organization proposed by
22 the Department of Fish and Wildlife in its letter attached to the Second
23 Supplement to Memorandum 2013-11, along these lines:

- 24 Division 1. General Provisions
- 25 Division 2. Administration
- 26 Division 3. Law Enforcement
- 27 Division 4. Inter-Jurisdictional Compacts
- 28 Division 5. Freshwater Fisheries
- 29 Division 6. Marine Fisheries
- 30 Division 7. Wildlife Management
- 31 Division 8. Nongame and Endangered Species
- 32 Division 9. Planning and Environmental Review
- 33 Division 10. Miscellaneous Provisions

34 The Commission also decided that the proposed new code would be entitled
35 the “Fish and Wildlife Code.”

1 For the most part, the Commission deferred making decisions on the points
2 raised in Memorandum 2013-12 and Memorandum 2013-13, in order to provide
3 time for input from the affected agencies and the public. (It is expected that,
4 going forward, staff memoranda will proceed on two general tracks. The first
5 track will present new material, along with questions on which public input
6 would be helpful. The second track will provide public input on questions posed
7 in prior memoranda.)

8 The following decisions relating to the content of Memorandum 2013-12 and
9 Memorandum 2013-13 were made:

- 10 • Proposed Fish and Wildlife Code Section 20 will be included in the
11 proposed law.
- 12 • The explanation of the terminology used in Commission
13 Comments will be included in the Comment to proposed Fish and
14 Wildlife Code Section 20.
- 15 • Fish and Game Code Section 3 is obsolete and will not be included
16 in the proposed law. Instead, proposed Fish and Wildlife Code
17 Section 25 will be included in the proposed law.
- 18 • The Commission's report will note the potentially ambiguous and
19 inconsistent use of the defined terms "fish," "kelp," and
20 "mammal." The Commission will not attempt to resolve those
21 problems in this study.
- 22 • Proposed Fish and Wildlife Code Section 50 will be revised to
23 make clear that the Department of Fish and Wildlife and the Fish
24 and Game Commission have discretion to make unofficial
25 translations of statements and reports.
- 26 • The staff will analyze whether the existing Fish and Game Code
27 provisions governing the counting of days and weeks are
28 consistent with the Code of Civil Procedure.

29 STUDY T-100 & T-103 — TECHNICAL AND MINOR SUBSTANTIVE
30 STATUTORY CORRECTIONS

31 The Commission considered Memorandum 2013-16, which presented a staff
32 draft tentative recommendation addressing several minor errors in the code that
33 the staff found in the course of its work.

34 The Commission decided that the proposed amendment of Penal Code
35 Section 11163.3 (Memorandum 2013-16, Attachment pp. 11-14) should also
36 correct a cross-reference in subparagraph (g)(2)(J), as follows:

1 (J) Notwithstanding Section ~~10825~~ 10850 of the Welfare and
2 Institutions Code, records of in-home supportive services, unless
3 disclosure is prohibited by federal law.

4 The tentative recommendation should include a Note that draws attention to this
5 cross-reference correction and solicits input on it.

6 The tentative recommendation should also include a Note asking whether the
7 cross-reference to Probate Code Section 2359 in Probate Code Section 2356.5(h) is
8 correct.

9 Subject to these revisions and any necessary conforming revisions, the
10 Commission approved the draft as a tentative recommendation, to be posted to
11 the Commission's website and circulated for comment.

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Secretary