
***APPROVED* MINUTES OF MEETING**
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 6, 2014
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on February 6, 2014.

Commission:

Present: Damian Capozzola, Chairperson
Victor King, Vice Chairperson
Diane F. Boyer-Vine, Legislative Counsel
Xochitl Carrion
Susan Duncan Lee
Crystal Miller-O'Brien

Absent: Judge Patricia Cowett (Ret.)
Assembly Member Roger Dickinson
Senator Ted Lieu
Taras Kihiczak

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Valerie Baumer
Laura Bennett, Verizon
Yolanda Benson, Government Strategies, Inc.
Blanca Castro, AARP
June Clark, Governor's Office
Elizabeth Dietzen Olsen, Senate Office of Research
Claudine Desmond, Desmond & Desmond
Jerry Desmond, Desmond & Desmond
Jerry Desmond, Jr., Desmond & Desmond
Jim Ewert, California Newspaper Publishers Association
Daniel Felizzatto, Los Angeles District Attorney's Office
Amelia Green, Stanford Law School
Lindsay Gullahorn, Capitol Advocacy

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ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

- Going forward, the staff will prepare a memorandum when presenting draft meeting minutes.
- Before posting any meeting recordings on the Commission’s website, the staff will research the requirements of the federal Rehabilitation Act, as it applies to California agencies. The staff will report its findings at the April 2014 meeting.
- The staff will start the formal process of revising the Commission’s Statement of Incompatible Activities at the beginning of the next fiscal year.
- The Governor’s budget would slightly increase the Commission’s budget. This would include an additional .5 authorized positions.
- The staff received informal advice from an attorney at the Fair Political Practices Commission that work as counsel or as a neutral in mediation does not present a disqualifying conflict of interest with regard to the Commission’s study of the Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct.

Open Government Laws

The Commission considered Memorandum 2014-1, summarizing “open government” laws applicable to the Commission. The memorandum did not present any questions for decision. As a follow-up, the staff will confirm that the Commission’s current practices regarding the dissemination of material handed out at meetings complies with the requirements of the Bagley-Keene Open Meeting Act.

2014 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2014-2 and its First Supplement, reporting on the Commission’s 2014 legislative program.

On behalf of AARP, Blanca Castro thanked the Commission for its work on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”). She also informed the Commission that AARP plans to support Senate Bill 940 (Jackson), which would implement the Commission’s recommendation on the topic.

1 Regarding that bill, the Commission ratified the Chair's decision to revise
2 proposed Government Code Section 70663 as follows:

3 70663. (a) The fee for registering a conservatorship under Article
4 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division
5 4 of the Probate Code is thirty dollars (\$30). Subject to subdivision
6 (b), ~~amounts~~ Amounts collected shall be distributed to the Trial
7 Court Trust Fund under Section 68085.1.

8 (b) ~~From the operative date of this section to June 30, 2017,~~
9 ~~inclusive, ten dollars (\$10) of each fee collected pursuant to~~
10 ~~subdivision (b) shall be used by the Judicial Council for the~~
11 ~~expenses of the Judicial Council in implementing and~~
12 ~~administering the civil representation pilot program under Section~~
13 ~~68651.~~

14 The staff should take steps to ensure that the printed version of the
15 Commission's recommendation reflects this revision.

16 STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER
17 INFORMATION FROM COMMUNICATION SERVICES PROVIDERS

18 The Commission considered Memorandum 2014-5, introducing the study of
19 State and Local Agency Access to Customer Information from Communication
20 Services Providers. The Commission approved the approach described in the
21 memorandum. In addition, the following disclosures and decisions were made:

- 22 • Commissioner Susan Duncan Lee disclosed that she had helped to
23 prepare an opinion of the Attorney General relating to trap and
24 trace devices. She does not see this as creating any conflict with
25 regard to the study.
- 26 • Commissioner Victor King disclosed that he is an Information
27 Privacy Officer and is a certified member of the International
28 Association of Privacy Professionals. He does not see this as
29 creating any conflict with regard to the study.
- 30 • The staff will contact the National Conference of Commissioners
31 on Uniform State Laws to determine whether they are doing any
32 work that relates to the study.
- 33 • If the study exposes any problems relating to civil discovery, those
34 will be noted for possible future attention.
- 35 • The staff will attempt to locate sources of technical expertise that
36 have no direct interest in the outcome of the study.

1 Robert M. Morgester, of the Office of the Attorney General, submitted a
2 document providing background on searches of communication records. See
3 First Supplement to Memorandum 2014-5.

4 STUDIES H-855 & H-856 — COMMON INTEREST DEVELOPMENT LAW

5 The Commission considered Memorandum 2014-9 and its First, Second, and
6 Third Supplements, discussing public comment on the Commission's recent
7 work on common interest development law. The Commission directed the staff
8 to be cautious about responding to media commentary, evaluating each instance
9 on a case-by-case basis.

10 STUDY J-1314 — TRIAL COURT UNIFICATION: PUBLICATION OF LEGAL NOTICE

11 The Commission considered Memorandum 2014-4 and its First Supplement,
12 introducing a new study on publication of legal notice in judicial districts. In
13 future written materials, the staff will explain that the current study will not
14 address the use of Internet publication as an alternative to print publication. That
15 issue is beyond the scope of the current study, which is focused on addressing
16 laws made obsolete by trial court unification.

17 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND
18 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

19 The Commission considered Memorandum 2014-6, presenting a preliminary
20 analysis of policy considerations relevant to the intersection of mediation
21 confidentiality and attorney misconduct. The memorandum did not present any
22 questions for decision.

23 For the next meeting, the staff should begin to explore the Uniform Mediation
24 Act and the law of other jurisdictions. For consideration in that regard, mediator
25 Ron Kelly submitted a document entitled "Sample Summary of Significant
26 Differences Between UMA and Current California Statutes." See First
27 Supplement to Memorandum 2014-6.

1 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
2 PROTECTIVE PROCEEDINGS JURISDICTION ACT

3 The Commission considered Memorandum 2014-3 and its First Supplement,
4 discussing conforming revisions for its final recommendation on UAGPPJA.

5 The Commission approved the conforming revisions shown below. The staff
6 should take steps to include those conforming revisions in (1) the printed version
7 of the recommendation, and (2) the implementing legislation (SB 940 (Jackson)).

8 **Appealable Orders**

9 To provide guidance on the appealability of an order issued under the
10 proposed law, a provision along the following lines should be added to the
11 Probate Code:

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

14 1301.5. The following rules apply with respect to the California
15 Conservatorship Jurisdiction Act, Chapter 8 (commencing with
16 Section 1980) of Part 4:

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

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

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

28 (c) An appeal may be taken from a final order under Section
29 2002 accepting a transfer and appointing a conservator in this state.

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

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

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

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

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

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

10 Subdivision (c) makes clear that a *final* order accepting a transfer
11 of a conservatorship is appealable. See also Section 1301(a) (order
12 granting letters of conservatorship is appealable). In contrast, an
13 order *provisionally granting* a petition to transfer a conservatorship
14 to California is not appealable. If a court *denies* such a petition, the
15 California proceeding will be over and the court will enter an order
16 of dismissal, which will be appealable. See Code Civ. Proc. §§ 581d,
17 904.1.

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

23 **Authority to File a Petition for Instructions or a Petition to Grant a Power or**
24 **Authority (Prob. Code § 1455)**

25 Probate Code Section 1455 should be amended along the following lines:

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

28 1455. Any petition for instructions or to grant a guardian or a
29 conservator any power or authority under this division, which may
30 be filed by a guardian or conservator, may also be filed by a person
31 who petitions for the appointment of a guardian or conservator,
32 including, but not limited to, a person who petitions under Section
33 2002 for transfer of a conservatorship.

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

37 **Conservatorship for an Absentee (Prob. Code §§ 1840-1844)**

38 Probate Code Sections 1840 to 1844 should be amended along the following
39 lines:

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

42 1840. Except as otherwise provided in this article, a conservator
43 for an absentee (Section 1403) shall be appointed as provided in

1 Article 3 (commencing with Section 1820) of this chapter or Article
2 3 (commencing with Section 2001) of Chapter 8.

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

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

8 1841. In addition to the other required contents of the petition, if
9 the proposed conservatee is an absentee:

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

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

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

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

23 1842. In addition to the persons and entities to whom notice of
24 hearing is required under Section 1822 or 2002, if the proposed
25 conservatee is an absentee, a copy of the petition and notice of the
26 time and place of the hearing shall be mailed at least 15 days before
27 the hearing to the secretary concerned or to the head of the United
28 States department or agency concerned, as the case may be. In such
29 case, notice shall also be published pursuant to Section 6061 of the
30 Government Code in a newspaper of general circulation in the
31 county in which the hearing will be held.

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

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

37 1843. (a) No citation is required under Section 1823 to the
38 proposed conservatee if the proposed conservatee is an absentee.

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

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

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

45 1844. (a) An In a proceeding to appoint a conservator for an
46 absentee under Article 3 (commencing with Section 1820) of this

1 chapter or Article 3 (commencing with Section 2001) of Chapter 8,
2 an official written report or record complying with Section 1283 of
3 the Evidence Code that a proposed conservatee is an absentee shall
4 be received as evidence of that fact and the court shall not
5 determine the status of the proposed conservatee inconsistent with
6 the status determined as shown by the written report or record.

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

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

13 **Conservatorship for a Missing Person (Prob. Code §§ 1845-1849)**

14 Probate Code Sections 1845 to 1849 should be amended along the following
15 lines:

16 **Prob. Code § 1845 (amended). Appointment of conservator for** 17 **missing person**

18 1845. (a) Except as otherwise provided in this article, a
19 conservator of the estate of a person who is missing and whose
20 whereabouts is unknown shall be appointed as provided in Article
21 3 (commencing with Section 1820) of this chapter or Article 3
22 (commencing with Section 2001) of Chapter 8.

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

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

28 **Prob. Code § 1846 (amended). Contents of petition relating to** 29 **missing person**

30 1846. In addition to the other required contents of the petition, if
31 the proposed conservatee is a person who is missing and whose
32 whereabouts is unknown, the petition shall state all of the
33 following:

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

42 (b) The time and circumstance of the person's disappearance
43 and that the missing person has not been heard from by the
44 persons most likely to hear (naming them and their relationship to
45 the missing person) since the time of disappearance and that the

1 whereabouts of the missing person is unknown to those persons
2 and to the petitioner.

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

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

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

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

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

13 1847. In addition to the persons and entities to whom notice of
14 hearing is required under Section 1822 or Section 2002, if the
15 proposed conservatee is a person who is missing and whose
16 whereabouts is unknown:

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

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

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

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

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

33 1848. (a) In a proceeding under Article 3 (commencing with
34 Section 1820) to appoint a conservator of the estate of a person who
35 is missing and whose whereabouts is unknown, the following acts
36 are not required:

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

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

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

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

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

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

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

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

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

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

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

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

16 1849. A conservator of the estate of a person who is missing and
17 whose whereabouts is unknown may be appointed only if the court
18 finds all of the following:

19 (a) The proposed conservatee owns or is entitled to the
20 possession of real or personal property located in this state. In a
21 proceeding to transfer a conservatorship of a missing person to this
22 state under Article 3 (commencing with Section 2001) of Chapter 8,
23 this requirement is also satisfied if the court finds that the proposed
24 conservatee owns or is entitled to the possession of personal
25 property that is to be relocated to this state upon approval of the
26 transfer.

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

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

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

34 **Order Regarding Conservatee's Capacity to Give Informed Consent to Medical**
35 **Treatment (Prob. Code § 1890)**

36 Probate Code Section 1890 should be amended along the following lines:

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

39 1890. (a) An order of the court under Section 1880 may be
40 included in the order of appointment of the conservator if the order
41 was requested in the petition for the appointment of the
42 conservator or the transfer petition under Section 2002 or, except in
43 the case of a limited conservator, may be made subsequently upon
44 a petition made, noticed, and heard by the court in the manner
45 provided in this article.

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

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

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

22 **Proper Court for Seeking Approval of Compromise of Claim or Extension,**
23 **Renewal, or Modification of Obligation (Prob. Code § 2505)**

24 Probate Code Section 2505 should be amended along the following lines:

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

27 2505. (a) Subject to subdivision (c), where the claim or matter is
28 the subject of a pending action or proceeding, the court approval
29 required by this article shall be obtained from the court in which
30 the action or proceeding is pending.

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

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

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

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

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

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

