Study L-750 February 1, 2011

Memorandum 2011-8

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Introduction)

In October, the Commission decided to undertake a study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"), which was approved by the Uniform Law Commission ("ULC") in 2007. This memorandum introduces that study.

A copy of UAGPPJA is attached for the Commission's consideration. Also attached are the following documents obtained from ULC's website:

In addition to receiving support of the national organizations listed above, UAGPPJA has been approved by the American Bar Association.

When the Commission examined the possibility of studying UAGPPJA in October, several groups urged it to undertake such a study: the California Commission on Uniform State Laws, Alzheimer's Association, AARP, and the Congress of California Seniors. Since then, three other organizations have written to thank the Commission for including UAGPPJA in its 2011 agenda:

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.

The Commission has also received a preliminary analysis of UAGPPJA that attorney Peter Stern prepared for the Executive Committee of the State Bar Trusts & Estates Section ("TEXCOM") two years ago. See Exhibit pp. 22-26.

This memorandum begins by briefly describing UAGPPJA. The memorandum then recites some of the benefits of UAGPPJA, and explores which states have adopted UAGPPJA and which have not yet done so and why. Next, we provide a brief introduction to California law on guardianship and conservatorship. The memorandum concludes by noting some key issues relating to adoption of UAGPPJA in California.

The memorandum is purely informational, and does not require any Commission decisions. It is intended as a foundation for future discussions of specific aspects of UAGPPJA and whether and, if so, how UAGPPJA should be adapted for enactment in California. **We encourage interested individuals and organizations to provide any background information or general advice they would like the Commission to consider in its study.** Such communications can either be submitted to the Commission in writing, or can be presented orally at the upcoming Commission meeting.

A BRIEF DESCRIPTION OF UAGPPJA

UAGPPJA is not the only uniform act relating to guardianships and protective proceedings. Another uniform act, the Uniform Guardianship and Protective Proceedings Act ("UGPPA"), comprehensively addresses all aspects of guardianships and protective proceedings for both minors and adults. Although UGPPA was approved in 1997, it has only been adopted in a few states, and California is not one of them.

In contrast to UGPPA, UAGPPJA is narrow in scope, focusing on jurisdiction and related issues pertaining to adult guardianship and protective proceedings. Parts of it were modeled on the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which has been widely adopted throughout the United States. One reason UAGPPJA is limited to adults is because "most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA." *Prefatory Note to UAGPPJA*, p. 2.

UAGPPJA is divided into five different articles, as follows:

Article 1. General Provisions
Article 2. Jurisdiction
Article 3. Transfer of Guardianship or Conservatorship

Article 4. Registration and Recognition of Orders from Other States
Article 5. Miscellaneous Provisions

Each article is described briefly below.

Article 1. General Provisions

Article 1 of UAGPPJA "contains definitions and provisions designed to facilitate cooperation between courts in different states." *Prefatory Note to UAGPPJA*, p. 2.

Of particular importance, this article defines "conservator" as "a person appointed by the court to administer the *property* of an adult …." Section 102(2) (emphasis added). A "protective order" is "an order appointing a conservator or other order related to management of an adult's property." Section 102(10). Similarly, a "protective proceeding" is "a judicial proceeding in which a protective order is sought or has been issued." Section 102(11).

In contrast, the article defines "guardian" as "a person appointed by the court to make decisions regarding the *person* of an adult …." Section 102(3) (emphasis added). A "guardianship order" is "an order appointing a guardian." Section 102(4). Likewise, a "guardianship proceeding" is "a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued." Section 102(5).

Article 1 also contains the following provisions designed to facilitate cooperation between courts in different states:

- A provision authorizing a court in this state to *communicate* with a court of another state regarding a guardianship or protective proceeding. Section 104.
- A provision authorizing a court in this state to *request that a court of another state take certain action* in a guardianship or protective proceeding (e.g., holding an evidentiary hearing), and to *comply with such a reques*t from a court of another state. Section 105.
- A provision regarding *depositions and discovery* in guardianships and protective proceedings, which is designed to be "consistent with and complementary to the Uniform Interstate Depositions and Discovery Act." Section 106 & Comment. California adopted the Uniform Interstate Depositions and Discovery Act a few years ago, with certain modifications, on recommendation of this Commission.

In addition, Article 1 contains a provision that would permit, but would not require, a court in this state to treat a foreign country as if it were another state

for purposes of applying UAGPPJA. Section 103. That provision does not apply to Article 4 of UAGPPJA. *See id.*

Article 2. Jurisdiction

According to the ULC, Article 2 of UAGPPJA is "the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order." *Prefatory Note to UAGPPJA*, p. 2. By establishing a mechanism for determining which court has jurisdiction, this article would address an important problem:

> Because the United States has 50 plus guardianship systems, *problems of determining jurisdiction are frequent*. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

Id. at 1 (emphasis added). The principal objective of the article is to "assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states." *Id.*

To help resolve jurisdictional issues, Article 2 introduces the terms "home state" and "significant-connection state." In general, a person's "home state" is the state in which the person "was *physically present*, including any period of temporary absence, *for at least six consecutive months immediately before* the filing of a petition for a protective order or the appointment of a guardian …." Section 201(a)(2).

A person's "significant-connection state" is a state, other than the home state, with which the person "has a significant connection other than mere physical presence and in which substantial evidence concerning the [person] is available. Section 201(a)(3). Factors to consider in determining whether a person has a significant connection with a particular state are:

- The location of the person's family and other persons required to be notified of the guardianship or protective proceeding.
- The length of time the person at any time was physically present in the state and the duration of any absence.
- The location of the person's property.
- The extent to which the person has ties to the state, such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Section 201(b). A respondent in a guardianship or protective proceeding may have several "significant connection" states, but will have only one "home state." *Prefatory Note to UAGPPJA*, p. 3.

The key provision for resolving jurisdictional issues is Section 203 of UAGPPJA. It establishes a three-level priority system:

(1) A court in a person's "home state" has primary jurisdiction to appoint a guardian or issue a protective order for the person.
(2) If a person does not have a "home state," and in certain other circumstances, a court in a "significant-connection" state has such jurisdiction.
(3) In highly restricted circumstances, a court in another state may appoint a guardian or issue a protective order for a person.

See Section 203 & Comment.

Section 204 of UAGPPJA provides rules for determining jurisdiction in special cases, such as appointment of a guardian in an emergency situation. The remainder of Article 2 "elaborates on" the core concepts described above. *Prefatory Note to UAGPPJA*, p. 4.

Article 3. Transfer of Guardianship or Conservatorship

Article 3 of UAGPPJA concerns transfer of an existing guardianship or conservatorship from one state to another state. "Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding." Article 3 General Comment.

Before UAGPPJA, few states had streamlined procedures for transferring a guardianship or conservatorship proceeding to another state, or for accepting such a transfer. *Prefatory Note to UAGPPJA*, p. 1. "In most states, all of the procedures for an original appointment [would have to] be repeated, a time consuming and expensive prospect." *Id*. Article 3 of UAGPPJA provides "an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection." *Id*.

To transfer a guardianship or conservatorship proceeding under UAGPPJA, two court orders are necessary: one from the court transferring the case, and another from the court accepting the case. "The transferring court must find that the incapacitated or protected person is physically present in or is reasonably expected to move permanently to the other state, that adequate arrangements

have been made for the person or the person's property in the other state, and that the court is satisfied the case will be accepted by the court in the other state." *Id*. at 4; see Section 301.

After the transferring court makes such findings, a petition must be filed in the other state, and the court in that state "must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state." Article 3 General Comment; Section 302(d). The transferring court cannot dismiss its proceeding until it receives a copy of the other court's provisional order accepting the transfer. Section 301(f). "To expedite the transfer process, the court in the accepting state *must give deference* to the transferring court's finding of incapacity and selection of the guardian or conservator." *Prefatory Note to UAGPPJA*, pp. 4-5 (emphasis added); Section 302(g).

The ULC explains the reasons for this procedure as follows:

> The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such a proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. … *But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator.* Article 3 eliminates this problem. Section 302(g) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

Article 3 General Comment (emphasis added).

Article 4. Registration and Recognition of Orders from Other States

Article 4 of UAGPPJA is designed to ensure that a guardianship or protective order is enforceable not only in the state that entered the order, but in other UAGPPJA states as well. Prior to UAGPPJA, "few states ha[d] enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state." Article 4

General Comment. As the ULC explains, there is no federal mandate that a guardianship or conservatorship determination be honored in a state other than the one in which it was entered:

> The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. *But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one.*

Prefatory Note to UAGPPJA, p. 2 (emphasis added).

To address this situation, Article 4 of UAGPPJA establishes a registration procedure for a guardianship or protective order. "Section 401 provides for registration of guardianship orders, and Section 402 for registration of protective orders." Article 4 General Comment. Upon completion of the registration process, "Section 403 authorizes the guardian or conservator to thereafter *exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state*." *Id.* (emphasis added).

Article 5. Miscellaneous Provisions

Article 5 of UAGPPJA contains miscellaneous provisions: a provision specifying the effective date of the act (Section 505), a provision on retroactive application of the act (Section 504), a provision on how the act interrelates with the Electronic Signatures in Global and National Commerce Act (Section 502), and a provision stating that the act should be construed "to promote uniformity of the law with respect to its subject matter among states that enact it" (Section 501). Article 5 also includes a provision that would repeal any inconsistent laws a state has previously enacted relating to guardianship and conservatorship (Section 503).

BENEFITS OF UAGPPJA

According to the Alzheimer's Association, in 1987 approximately 400,000 adults in the United States had a court-appointed guardian. Current data is unavailable, but "demographic trends suggest that today this number probably is much higher." Exhibit p. 6.

"Adult guardianship jurisdiction issues commonly arise in situations involving snowbirds, transferred/long-distance caregiving arrangements, interstate health markets, wandering, and even the occasional incidence of elderly kidnapping." *Id.* The Alzheimer's Association has provided four

hypotheticals to illustrate the benefits of UAGPPJA in such situations. We quote them verbatim below, because they concretely and succinctly demonstrate the types of problems that may arise and how UAGPPJA could help address those problems:

> **Scenario #1 Transferred Caregiving Arrangements:** Jane cares for her mother who has dementia in their home in Texas. A Texas court has appointed Jane as her mother's legal guardian. Unfortunately, Jane's husband loses his job, and Jane and her family move to Missouri. Neither Texas nor Missouri have enacted UAGPPJA. Upon arriving in Missouri, Jane attempts to transfer her Texas guardianship decision to Missouri, but she is told by the court she must refile for guardianship under Missouri law because Missouri does not recognize adult guardianship rights made in other states. This duplication of effort burdens families both financially and emotionally.
>
> **Scenario #2 Snowbirds:** Alice and Bob are an elderly couple who are residents of New York, but they spend their winters at a rental apartment in Florida. Alice has Alzheimer's disease, and Bob is her primary caregiver. In January, Bob unexpectedly passes away. When Steve, the couple's son, arrives in Florida, he realizes that his mother is incapable of making her own decisions and needs to return with him to his home in Nebraska. Florida, New York and Nebraska have not adopted UAGPPJA. Steve decides to institute a guardianship proceeding in Florida. The Florida court claims it does not have jurisdiction because neither Alice nor Steve have their official residence in Florida. Steve next tries to files for guardianship in Nebraska, but the Nebraska court tells Steve that it does not have jurisdiction because Alice has never lived in Nebraska, and a New York court must make the guardianship ruling. If these three states adopted UAGPPJA, the Florida court initially could have communicated with the New York court to determine which court had jurisdiction.
>
> **Scenario #3 Interstate Health Markets (local medical centers accessed by persons from multiple states):** Jack, a northern Indiana man with dementia, is brought to a hospital in Chicago because he is having chest pains. As it turns out, he is having a heart attack. While recuperating in the Chicago hospital, it becomes apparent to a hospital social worker that Jack's dementia has progressed, and he now needs a guardian. Unfortunately, Jack does not have any immediate family, and his extended family lives at a distance. The social worker attempts to initiate a guardianship proceeding in Indiana. However, she is told that because Jack does not intend to return to Indiana, she must file for guardianship in Illinois. The Illinois court then refuses guardianship because Jack does not have residency in Illinois. Even though the Indiana court is located

within miles of the Illinois state line, no official channel exists for the two state courts to communicate about adult guardianship because neither state has enacted UAGPPJA.

The final example demonstrates how the process for resolving a jurisdictional adult guardianship issue is simplified if the states involved have adopted UAGPPJA:

> **Scenario #4 Long-Distance Caregiving:** Sarah, an elderly woman living in Utah, falls and breaks her hip. She and her family decide it is best that she recover from her injuries at her daughter's home in Colorado. During Sarah's stay in Colorado, her daughter, Lisa, realizes her mother's cognition is impaired, and she is no longer capable of making independent decisions. Lisa decides to petition for guardianship in Colorado. Thankfully, both Colorado and Utah have adopted UAGPPJA, and the Colorado court can easily communicate with the Utah court. Following the rules established in UAGPPJA, the Colorado court asks the Utah court if any petitions for guardianship for Sarah have been filed in Utah. The Utah court determines that no outstanding petitions exist and informs Colorado that it may take jurisdiction in the case. Thus, although Utah is Sarah's home state, Colorado may make the guardianship determination.

Exhibit pp. 7-8.

ADOPTION OF UAGPPJA IN THE UNITED STATES

"To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA." *Id.* at 6. For this reason, "UAGPPJA only will work if a large number of states adopt it." *Id.*

To date, UAGPPJA has been adopted by the District of Columbia and 19 states:

(1) Alabama
(2) Alaska
(3) Arizona
(4) Colorado
(5) Delaware
(6) Illinois
(7) Iowa
(8) Maryland
(9) Minnesota
(10) Montana
(11) Nevada
(12) North Dakota
(13) Oklahoma
(14) Oregon
(15) South Carolina
(16) Tennessee
(17) Utah
(18) Washington
(19) West Virginia

(It is noteworthy that all of the states adjacent to California have adopted UAGPPJA. Jurisdictional issues between California and those states may be common in border areas.)

The staff has not yet examined how closely the above states adhered to the ULC language in adopting UAGPPJA. We are aware of some minor deviations (e.g., Nevada revised the jurisdictional standards slightly, and Delaware omitted the provisions on recognition of an out-of-state guardianship, because equivalent provisions already existed in Delaware). So far, however, our impression is that in general the adopting states have stuck closely to the ULC language.

Legislation to enact UAGPPJA is currently pending in another nine states: Arkansas (SB 4), Connecticut (SB 145), Indiana (SB 77 & HB 1055), Kentucky (HB 164), Mississippi (HB 55), Missouri (HB 130), Nebraska (LB 85), Vermont (HB 79), and Virginia (SB 750). In addition, a number of other states are looking into the possibility of adopting UAGPPJA, but no legislation is currently pending. For example, the New Jersey Law Revision Commission is in the midst of a study similar to this one, and is currently circulating a tentative recommendation proposing adoption of UAGPPJA in New Jersey, with various modifications to tailor the act to New Jersey conditions.

A few states, including some of the states where UAGPPJA legislation is currently pending, considered UAGPPJA to some extent in 2010 or earlier and did not adopt it. Among these are Connecticut, Hawaii, Florida, Kentucky, Nebraska, Vermont, and Virginia. The staff is attempting to learn what the concerns were, if any.

According to Eric Fish, a Legislative Counsel for the ULC, most of the states that have not adopted UAGPPJA have referred the matter to a bar association for study. He noted, however, that Florida recently did an overhaul of its guardianship and probate law, which overlaps with the scope of UAGPPJA. There apparently is some reluctance to make changes in that recently-adopted statutory scheme, and some sentiment that Florida law is preferable to UAGPPJA on certain points (e.g., sentiment that Florida's standard for establishing a guardianship is better than the standards used in other states, which Florida would be required to accept to some extent in adopting UAGPPJA). Efforts are underway to address these concerns.

Kentucky is another state that has considered, but has not yet adopted, UAGPPJA. After a 2010 bill on the subject failed to pass, an Interim Joint Committee on Judiciary discussed the matter. Among other things, the minutes of that meeting state:

> Several members of the committee observed that *Kentucky requires a jury trial in disability cases* to protect the rights of the person alleged to be disabled and observed that previous legislation to make the

> jury trial optional unless a trial was requested by a party or the court had failed due to concerns about the rights of the person alleged to be disabled. *Representative Kerr observed that a person declared disabled is deprived of their personhood and in his practice several juries have determined the person was not disabled, or the judge instructed the jury to determine the person was not disabled.* Ms. Smith responded the uniform act does not require a jury trial and other states which have adopted the uniform act do not require a jury trial.

Minutes of the 5th Meeting of the 2010 Interim (Nov. 10, 2010), p. 2 (emphasis added). As mentioned above, a new bill to enact UAGPPJA has been introduced in Kentucky this year.

In early January 2010, the status of UAGPPJA in Connecticut was described as follows:

> In Connecticut, enactment of the UAGPPJA was *opposed by some legal services attorneys and by the state's protection and advocacy office* (in part because they thought that *the legislation was unnecessary given the state's recent enactment of the UGPPA*). Despite those objections, the Senate Judiciary Committee gave the bill a favorable report on a vote of 37 to 5. But the bill was not brought up for a vote in the Senate and was eventually sent back to the Judiciary Committee.

Memorandum from John Saxon to Guardianship Reform Work Group (1/26/10), http://www.sog.unc.edu/programs/guardianshipreform/documents/UAGPPJAImplementation.pdf (emphasis added). UAGPPJA was not enacted in Connecticut in 2010, but it is another state where UAGPPJA legislation is currently pending.

Finally, we were able to obtain some documents on the fate of UAGPPJA legislation in Hawaii. A bill to implement UAGPPJA was introduced but not enacted in Hawaii last year (HB 2248). We did not find any evidence of true opposition. However, the Hawaii Judiciary expressed a number of concerns about the bill, without taking a position on its merits. Some of the concerns related to the transitional costs that would result from enactment of UAGPPJA:

> The Judiciary takes no position on the merits of House Bill No. 2248, however, respectfully offers the following concerns with regard to its potential negative impact to judicial operations.
>
> As currently drafted, this measure would require changes to court policies, procedures, and rules. In light of the furloughs and budget shortages caused by the current economic downturn, the Judiciary is concerned that the additional work this measure might create would consume valuable and limited staff resources.

> If the legislature deems it necessary to pass this measure, the Judiciary respectfully requests the effective date be delayed to accommodate the necessary changes for implementation.

Written testimony of Thomas Keller to House Committee on Judiciary (Jan. 26, 2010). There was also concern about whether the bill was necessary, and how it would affect minors:

> This bill may not be necessary and may subject families and guardians to increased (and needless) complexity and procedure.
>
> Currently, families are able to seek protection for challenged minors before they turn 18 years of ages, thus providing seamless protection. This bill appears to not allow that as it defines an "incapacitated person" as an adult ….

Written testimony of Thomas Keller to House Committee on Finance (Feb. 25, 2010). The Hawaii Judiciary requested "time to perform a more in-depth review of the need for these procedures." *Id.* Presumably, that work is ongoing.

A BRIEF INTRODUCTION TO CALIFORNIA LAW ON GUARDIANSHIP AND CONSERVATORSHIP

In considering whether to adopt UAGPPJA in California, it is necessary to have an understanding of existing California law on guardianship and conservatorship. The discussion below briefly introduces that topic; we will provide further information as this study progresses. We begin by describing the terminology used in California for these types of cases. After describing the terminology, we discuss some of the substantive rules.

Terminology

California uses very different terminology than UAGPPJA for the types of proceedings covered by UAGPPJA. Under UAGPPJA, a "guardian" is "a person appointed by the court to make decisions regarding the *person* of an *adult* …." Section 102(3) (emphasis added). In California, a "guardian" may only be appointed for a minor. See Prob. Code §§ 1500-1501. The term "conservator of the person" is comparable to what UAGPPJA denominates a "guardian." With certain exceptions, a court may appoint a "conservator of the person" for "a person who is unable to provide properly for his or her personal needs for physical health, food, clothing, or shelter …." Prob. Code § 1800.3(a).

Under UAGPPJA, the term "conservator" refers to "a person appointed by the court to administer the *property* of an adult …." Section 102(2) (emphasis

added). In California, the comparable term is a "conservator of the estate." With certain exceptions, a court may appoint a "conservator of the estate" for "a person who is substantially unable to manage his or her own financial resources or to resist fraud or undue influence …." Prob. Code § 1800.3(b).

California also expressly recognizes that a single person may serve as both "conservator of the person" and "conservator of the estate." Prob. Code § 1800.3(c). Such a person may be referred to as a "conservator of the person and estate." *Id*. In contrast, UAGPPJA does not include a special term for a person who acts in both roles (i.e., a person who is both a "guardian" and a "conservator" as defined in UAGPPJA).

A further complication is the terminology used to refer to the types of proceedings in which such appointments are made. Under UAGPPJA, a "guardianship proceeding" is "a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued." Section 102(5). A "protective order" is "an order appointing a conservator or other order related to management of an adult's property," and a "protective proceeding" is "a judicial proceeding in which a protective order is sought or has been issued." Section 102(10), (11). The term "conservatorship" is not defined, although it is used in a few places in UAGPPJA, apparently synonymously with "protective proceeding."

Here in California, the term "guardianship proceeding" is reserved for proceedings relating to minors, which are not addressed by UAGPPJA. Under California law, the term "conservatorship proceeding" encompasses both a proceeding to appoint a "conservator of the person" and a proceeding to appoint a "conservator of the estate," as well as a proceeding to appoint a "conservator of the person and estate." Moreover, the term "protective proceeding" is used far more inclusively than under UAGPPJA: It includes both "conservatorship proceedings" and "guardianship proceedings," as well as some types of similar proceedings. See Prob. Code §§ 1301, 4126, 4672; Cal. R. Ct. 7.51(d), 10.478(a), 10.776(a).

Substantive Rules

In 1978, this Commission proposed a new guardianship-conservatorship law, which was enacted in 1979, refined to some extent in 1980, and became operative on January 1, 1981. See 1979 Cal. Stat. ch. 726; 1980 Cal. Stat. chs. 89, 246; *Guardianship-Conservatorship Law,* 14 Cal. L. Revision Comm'n Reports 501 (1978); *Guardianship-Conservatorship* (technical change), 15 Cal. L. Revision Comm'n

Reports 1427 (1980). That body of law was recodified a decade later, with some changes, when the Legislature enacted a new Probate Code on this Commission's recommendation. See 1990 Cal. Stat. ch. 79; *Recommendation Proposing New Probate Code*, 20 Cal. L. Revision Comm'n Reports 1001 (1989).

The guardianship-conservatorship law has been repeatedly revised over the years, on recommendation of this Commission and otherwise. In 2006, it was extensively overhauled, with the enactment of four major bills that comprised the "Omnibus Conservatorship and Guardianship Reform Act of 2006." See 2006 Cal. Stat. chs 490, 491, 492, 493. The Commission was not involved in that effort.

Some of the basic rules governing conservatorships are described below. We then briefly discuss the 2006 reforms. Finally, we mention a few provisions that relate to interstate issues, or otherwise seem particularly pertinent to consideration of UAGPPJA.

Basic Rules Governing Conservatorships

Probate Code Section 1800 expresses the Legislature's intent relating to establishment of conservatorships:

> 1800. It is the intent of the Legislature in enacting this chapter to do the following:
>
> (a) Protect the rights of persons who are placed under conservatorship.
>
> (b) Provide that an assessment of the needs of the person is performed in order to determine the appropriateness and extent of a conservatorship and to set goals for increasing the conservatee's functional abilities to whatever extent possible.
>
> (c) Provide that the health and psychosocial needs of the proposed conservatee are met.
>
> (d) Provide that community-based services are used to the greatest extent in order to allow the conservatee to remain as independent and in the least restrictive setting as possible.
>
> (e) Provide that the periodic review of the conservatorship by the court investigator shall consider the best interests of the conservatee.
>
> (f) Ensure that the conservatee's basic needs for physical health, food, clothing, and shelter are met.
>
> (g) Provide for the proper management and protection of the conservatee's real and personal property.

Consistent with the foregoing goals, "[n]o conservatorship of the person or of the estate shall be granted by the court unless the court makes an *express finding* that the granting of the conservatorship is the *least restrictive alternative* needed for the protection of the conservatee." Prob. Code § 1800.3(b) (emphasis added). Further,

the standard of proof for appointment of a conservator "shall be clear and convincing evidence." Prob. Code § 1801(e). The court must periodically review the conservatorship to ensure that it remains in the best interests of the conservatee. See Prob. Code § 1850. But there is no right to a jury trial in a conservatorship proceeding. Prob. Code § 1452.

In a conservatorship of the person, the conservator "manages the personal care of a person who cannot properly provide for his or her personal needs for physical health, medical care, food, clothing, or shelter." California Conservatorship Practice § 1.2, p. 3 (CEB 2005). "In a conservatorship of the estate, a court-appointed conservator manages the financial affairs of a person who is substantially unable to manage his or her own financial resources or to resist fraud or undue influence." *Id.* "The conservator's primary responsibility is to conserve, manage, and use the conservatee's property in California for the benefit of both the conservatee and those whom he or she is obligated to support." *Id.*

"The establishment of a conservatorship shifts the responsibility for making financial and personal care decisions from the conservatee to the conservator, and imposes significant limitations on the conservatee's ability to act on his or her own behalf." *Id.* at § 1.3, p. 4. "Under a conservatorship of the person, the conservator has the 'care, custody and control' of the conservatee, which includes the power to determine where the conservatee will live." *Id.*; see Prob. Code §§ 2351, 2352. The conservatee retains the power to make medical decisions, except upon a finding that the conservatee lacks capacity to give informed consent. See Prob. Code §§ 2354, 2355.

When there is a conservatorship of the estate, the conservatee "is presumed to lack capacity to contract, to sell, transfer, or convey property, to make gifts, to incur debts (except in limited circumstances), to delegate powers, to waive any rights, or to serve as a fiduciary." Cal. Conservatorship Practice, at § 1.3, p.4; see Prob. Code §§ 1870, 1872.

"The relationship of conservator, whether of the person or estate, and conservatee is a fiduciary relationship that is governed by the law of trusts." Cal. Conservatorship Practice, at § 14.1, p. 604; Prob. Code § 2101. "Consequently, every conservator … assumes the basic obligation of a fiduciary to act prudently and in good faith." Cal. Conservatorship Practice, at § 12.2, p. 516.

In determining whether to appoint a conservator, a court must assess the capacity of the prospective conservatee. The Due Process in Competence

Determinations Act ("DPCDA") provides guidelines for that assessment. See Prob. Code §§ 810-813, 1801, 1881, 3201, 3204, 3208. Under that act, all persons are rebuttably presumed to "have the capacity to make decisions and to be responsible for their acts or decisions." Prob. Code § 810(a). A determination that a person lacks capacity must "be based on *evidence of a deficit* in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder." Prob. Code § 810(c) (emphasis added); see also Prob. Code § 811.

2006 Reforms

In 2006, the Legislature found that California's conservatorship system was fundamentally flawed and in need of reform:

> The Legislature finds and declares the following:
>
> (a) The rate of increase in the number of Californians who are 65 years of age or older is surpassing that in other states. The number of people who are 65 years of age will grow from 3.7 million people in the year 2000, to 6.3 million in the year 2020. The fastest growing segment of California's population, expected to increase by 148 percent between the years 1990 and 2020, is people who are 85 years of age or older. As many as 10 percent of the population over 65 years of age and almost 50 percent of the population over 85 years of age will suffer from Alzheimer's disease.
>
> (b) As the population of California continues to grow and age, an increasing number of persons in the state are unable to provide properly for their personal needs, to manage their financial resources, or to resist fraud or undue influence.
>
> (c) One result of these trends is the growing number of persons acting as conservators on behalf of other persons or their estates. It is estimated that about 500 professional conservators oversee $2.5 billion in assets. Over 5,000 conservatorship petitions are filed each year in California.
>
> (d) Probate courts oversee the work of conservators, but, in part due to a lack of resources and conflicting priorities, courts often do not provide sufficient oversight in conservatorship cases to ensure that the best interests of conservatees are protected.
>
> (e) Professional fiduciaries are not adequately regulated at present. This lack of regulation can result in the neglect, or the physical or financial abuse, of the clients professional fiduciaries are supposed to serve.
>
> (f) Public guardians do not have adequate resources to represent the best interests of qualifying Californians and, therefore, many in need of the assistance of a conservator go without.
>
> (g) As a result, the conservatorship system in California is fundamentally flawed and in need of reform.

2006 Cal. Stat. ch. 493, § 2.

To address the perceived problems, the Legislature enacted four different bills, which collectively are referred to as the "Omnibus Conservatorship and Guardianship Reform Act of 2006." Each bill has a different focus, as follows:

(1) **SB 1116 (Scott), 2010 Cal. Stat. ch. 490.** This bill established a presumption that "the personal residence of the conservatee at the time of commencement of the [conservatorship] proceeding is the least restrictive appropriate residence for the conservatee." Prob. Code § 2352.5. The bill also revised provisions relating to sale of a conservatee's personal residence.

(2) **SB 1550 (Figueroa), 2010 Cal. Stat. ch. 491, which is known as the "Professional Fiduciaries Act."** This bill created the Professional Fiduciaries Bureau in the Department of Consumer Affairs, and required the bureau to license and regulate professional fiduciaries. The bill also created the Professional Fiduciaries Advisory Committee, and specified its duties.

(3) **SB 1716 (Bowen), 2010 Cal. Stat. ch. 492.** This bill strengthened the system for court review of existing conservatorships.

(4) **AB 1363 (Jones), 2010 Cal. Stat. ch. 493.** Among other things, this bill required the Judicial Council to establish qualifications and educational requirements for court personnel involved in conservatorship matters, and to develop educational programs for nonlicensed conservators and guardians. The bill also required the Judicial Council to study and report on conservatorship practice in three counties, imposed other duties on the Judicial Council relating to conservatorship proceedings, and made various other changes to conservatorship law.

The staff is not sure how well these new laws have been working. A 2007 article in a State Bar publication warned that there might be problems due to lack of funding:

> Tragically, however, the Act provides no funding for those who must administer the new laws. Conservatorships were already expensive for all involved: petitioners, proposed conservators, conservatees, and the court system. By increasing the number and complexity of the procedures meant to protect vulnerable seniors, the Act will also increase the expense of conservatorships. And, unless the courts and the offices of the court investigators receive more funding, these procedures will fail to provide the intended protections.

E. Corey, Jr., M. Lodise & P. Stern, *Crisis in Conservatorships*, 12 Cal. Trusts & Estates Q. 43, 43 (Winter 2007). As this study progresses, we will attempt to learn

more about the current status of California's conservatorship system. Input on that point would be appreciated.

Provisions Particularly Pertinent to Consideration of UAGPPJA

UAGPPJA addresses three main points:

(1) Determining which state has jurisdiction of a guardianship proceeding (California's "conservatorship of the person") or protective proceeding (California's "conservatorship of the estate"). See UAGPPJA Article 2.

(2) Providing an effective and streamlined mechanism to transfer such a proceeding from one state to another. See UAGPPJA Article 3.

(3) Ensuring that a person appointed as a guardian (California's "conservator of the person") or conservator (California's "conservator of the estate") is able to effectively perform that role not only with regard to matters arising in the appointing state, but also when it is necessary to perform tasks or take action in another state. See UAGPPJA Article 4.

The staff has been keeping an eye out for California provisions that are relevant to these points. Our minimal preliminary research has uncovered the provisions described briefly below.

Determining Which State Has Jurisdiction (UAGPPJA Article 2)

California has a number of statutory provisions that specify the proper venue (i.e., the proper county) for filing a proceeding to create a conservatorship of the person or a conservatorship of the estate. See Prob. Code §§ 2201-2203. Among these is a provision that specifies the proper venue for a proceeding in which the proposed conservatee lives outside California. See Prob. Code § 2202.

However, the staff is not aware of any statutory provisions comparable to the ones in Article 2 of UAGPPJA, which give guidance on which state has jurisdiction when a proposed conservatee has contacts with more than one state. If there are such provisions, we would appreciate hearing about them.

Transfer of Proceeding from One State to Another (UAGPPJA Article 3)

Several California provisions give guidance on relocation of an incapacitated person, or such a person's assets, to another state. In particular, Probate Code Section 2352(c) states that "[i]f permission of the court is first obtained, a guardian or conservator may establish the residence of a ward or conservatee at a place not within this state." A court order under that provision "shall require the guardian or conservator either to return the ward or conservatee to this state,

or to cause a guardianship or conservatorship proceeding or its equivalent to be commenced in the place of the new residence, when the ward or conservatee has resided in the place of new residence for a period of four months or a longer or shorter period specified in the order." Prob. Code § 2352(d).

There are also provisions that authorize transfer of a person's personal property from California to that person's guardian, conservator, committee, or comparable fiduciary in another jurisdiction, if the person is not a California resident. See Prob. Code §§ 2800-2808 (transfer of nonresident's personal property by order of court in which conservatorship of the estate is pending); see also Prob. Code §§ 3800-3803 (transfer of nonresident's property when no proceeding for conservatorship of nonresident is pending or contemplated in this state).

The staff was unable to find any provisions that facilitate or specifically address the situation in which an incapacitated person moves from another state into California. Apparently, it would be necessary to begin a conservatorship proceeding from scratch under California law, even if a similar proceeding had already been conducted elsewhere. We invite comment on whether this preliminary assessment is correct.

Recognition and Enforcement of Out-of-State Appointment (UAGPPJA Article 4)

The staff was unable to find any California provisions that facilitate recognition and enforcement of an out-of-state appointment of a guardian (California's "conservator of the person") or conservator (California's "conservator of the estate"). For example, we could not find any provision that would require a California-based company to accept a contract document signed by an out-of-state conservator on a conservatee's behalf. Again, we invite comment on whether this preliminary assessment is correct.

KEY ISSUES RELATING TO ADOPTION OF UAGPPJA IN CALIFORNIA

Based on our current knowledge, the staff sees two sets of key issues relating to adoption of UAGPPJA in California: (1) terminology issues, and (2) issues pertaining to UAGPPJA's requirements that, in specified circumstances, California accept appointments and incapacity determinations made by other states, and associated procedures used by other states.

Terminology

The difference in terminology between UAGPPJA and corresponding California law is an obvious source of concern. To some extent, the ULC acknowledged and addressed this point in drafting UAGPPJA:

> **The Problem of Differing Terminology**
>
> States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person;" a "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology used in the UGPPA and in a majority of the states. *An enacting state that uses a different term than "guardian" or "conservator" for the person appointed by the court or that defines either of these terms differently than does the UGPPA may, but is not encouraged to, substitute its own term or definition.* Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

Prefatory Note to UAGPPJA, p. 5 (emphasis added).

Unfortunately, the problem here is not just that California uses one term and UAGPPJA uses another term for the same thing. Rather, in several instances California and UAGPPJA use exactly the same term, but with different meanings. In adapting UAGPPJA for possible enactment in California, the Commission will need to take special care to try to minimize the risk of confusion arising from this terminological disparity.

Acceptance of Determinations Made By and Procedures Used By Other States

In specified circumstances, UAGPPJA requires an adopting state to accept an incapacity determination and resultant appointment made by another state, and to respect the associated procedures used by other states. See Sections 302(g), 401-403. Because the rules for determining incapacity, making an appointment, and handling such a proceeding vary from state to state, there might be some resistance to these requirements.

For example, in analyzing UAGPPJA for the Executive Committee of the State Bar Trusts & Estates Section ("TEXCOM"), Peter Stern wrote:

> *A major concern the Legislature should have with this bill is the extent to which it would allow a person residing in California, or whose property is in California, to be subject to a less protective law based on the adult guardianship or conservatorship laws of another jurisdiction.* As the introduction to the Act states, one exception to Full Faith and Credit is for guardianship/conservatorship proceedings, and for good reason: California has adopted procedures for establishing incapacity, for protection of the residence of a conservatee, for enhancing the autonomy of conservatees, for defining the circumstances under which conservatorships may be created, that may be much more protective of the conservatee than what is provided for in sister state jurisdictions. Although [UAGPPJA] refers to acting within the scope of the laws of the home state, it may not be so simple to comply with such laws.

Exhibit p. 22 (emphasis added). Mr. Stern further explained:

> One concern California courts ought to have is whether the incapacity determination of the sister state meets California's standards. A California court should reject a petition for transfer where the incapacity finding has been based on standards that do not meet the test of California's standards under, e.g., DPCDA. The statute should amended to provide for provisional acceptance subject to such determination, if not outright rejection of the transfer.

Id. at 25-26. He concluded that UAGPPJA "will require substantial redrafting to fit California law," because "[s]tandards for capacity determination; for basic threshold findings for establishment of conservatorships; for roles of professional fiduciaries; to mention only a few areas, will have to be redrafted." *Id.* at 26. He further concluded that "[c]oordinating authority of an out of state conservator whose powers are registered in California (Section 403) will be a chore that will require a harmonization process in every case." *Id.*

The staff agrees that these matters will require careful attention and analysis. A good starting point might be to prepare a memorandum comparing and contrasting California conservatorship law with the corresponding laws in other states.

NEXT STEP

Comments on any aspect of the above discussion are welcome and encouraged. Unless the Commission otherwise directs, the staff is inclined to proceed by:

(1) Preparing a memorandum that compares and contrasts California conservatorship law with the corresponding laws in other states,
(2) Preparing a memorandum that discusses the terminological issues relating to adoption of UAGPPJA in California, and then
(3) Analyzing each article of UAGPPJA (section by section) for possible adoption in California.

We are, however, open to other suggestions and ideas about the best means of conducting this study.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SIXTEENTH YEAR
PASADENA, CALIFORNIA

July 27 – August 3, 2007

WITH PREFATORY NOTE AND COMMENTS

December 3, 2007

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

PREFATORY NOTE

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues in adult proceedings. Drafting of the UAGPPJA began in 2005. The Act had its first reading at the Uniform Law Commission 2006 Annual Meeting, and was approved at the 2007 Annual Meeting.

States may enact the UAGPPJA either separately or as part of the broader UGPPA or the even broader Uniform Probate Code (UPC), of which the UGPPA forms a part. Conforming amendments to the UGPPA and UPC are expected to be approved in 2009 that will facilitate enactment of the UAGPPJA by states that have enacted the UGPPA or UPC.

The Problem of Multiple Jurisdiction

Because the United States has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present. In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a second home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes. Article 2 of the UAGPPJA is intended to provide such a mechanism.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that an already existing guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to relitigate incapacity and whether the guardian or conservator appointed in the first state was an appropriate selection.

The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the United States Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state. Article 4 of the UAGPPJA creates a registration procedure. Following registration of the guardianship or protective order in the second state, the guardian may exercise in the second state all powers authorized in the original state's order of appointment except for powers that cannot be legally exercised in the second state.

The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the United States in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more that one state had jurisdiction to issue custody orders. But the Uniform Law Conference has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters; the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator or issue another type of protective order and contains definitions applicable only to that article. Its principal objective is to assure that an appointment or order is made or issued in only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring a guardianship or conservatorship proceedings from one state to another state. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains an effective date provision, a place to list provisions of existing law to be repealed or amended, and boilerplate provisions common to all uniform acts.

Key Definitions (Section 201)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" (Section 201(a)(2)) is the state in which the individual was physically present, including

any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or appointment of a guardian. If the respondent was not physically present in a single state for the six months immediately preceding the filing of the petition, the home state is the place where the respondent was last physically present for at least six months as long a such presence ended within the six months prior to the filing of the petition. Section 201(a)(2). Stated another way, the ability of the home state to appoint a guardian or enter a protective order for an individual continues for up to six months following the individual's physical relocation to another state.

A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available. Section 201(a)(3). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

- the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
- the length of time the respondent was at any time physically present in the state and the duration of any absences;
- the location of the respondent's property; and
- the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services. Section 201(b).

A respondent in a guardianship or protective proceeding may have multiple significant-connection states but will have only one home state.

Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

- *Home State*: The home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order.

- *Significant-connection State*: A significant-connection state has jurisdiction to appoint a guardian or conservator or issue another type of protective order if on the date the petition was filed:
    - the respondent does not have a home state or the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum; or
    - the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order (i) a

petition for an appointment or order is not filed in the respondent's home state; (ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and (iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206.

- *Another State*: A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction because the court in the other state is a more appropriate forum, or the respondent does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the respondent is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where a respondent's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article 3.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a guardian or conservator is appointed or other protective order is issued, the court's jurisdiction continues until the proceeding is terminated or transferred or the appointment or order expires by its own terms. Section 206 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states, requests for assistance made by a court to a court of another state, and the taking of testimony in another state. Sections 104-106.

Transfer to Another State (Article 3)

Article 3 specifies a procedure for transferring an already existing guardianship or conservatorship to another state. To make the transfer, court orders are necessary from both the court transferring the case and from the court accepting the case. The transferring court must find that the incapacitated or protected person is physically present in or is reasonably expected to move permanently to the other state, that adequate arrangements have been made for the person or the person's property in the other state, and that the court is satisfied the case will be accepted by the court in the other state. To assure continuity, the court in the transferring state cannot dismiss the local proceeding until the order from the state accepting the case is filed with the transferring court. To expedite the transfer process, the court in the accepting state must give

deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise in the registration state all powers authorized in the order except as prohibited by the laws of the registration state.

International Application (Section 103)

Section 103 addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures under Article 4, but a court in the United State may otherwise apply the Act as if the foreign country were an American state.

The Problem of Differing Terminology

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person;" a "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology used in the UGPPA and in a majority of the states. An enacting state that uses a different term than "guardian" or "conservator" for the person appointed by the court or that defines either of these terms differently than does the UGPPA may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting the Act will facilitate resolution of cases involving multiple jurisdictions.

The Drafting Committee was assisted by numerous officially designated advisors and observers, representing an array of organizations. In addition to the American Bar Association advisors listed above, important contributions were made by Sally Hurme of AARP, Terry W. Hammond of the National Guardianship Association, Kathleen T. Whitehead and Shirley B. Whitenack of the National Academy of Elder Law Attorneys, Catherine Anne Seal of the Colorado Bar Association, Kay Farley of the National Center for State Courts, and Robert G. Spector, the Reporter for the Joint Editorial Board for Uniform Family Laws and the Reporter for the Uniform Child Custody Jurisdiction and Enforcement Act (1997).

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

[ARTICLE] 1

GENERAL PROVISIONS

General Comment

Article 1 contains definitions and general provisions used throughout the Act. Definitions applicable only to Article 2 are found in Section 201. Section 101 is the title, Section 102 contains the definitions, and Sections 103-106 the general provisions. Section 103 provides that a court of an enacting state may treat a foreign country as a state for the purpose of applying all portions of the Act other than Article 4, Section 104 addresses communication between courts, Section 105 requests by a court to a court in another state for assistance, and Section 106 the taking of testimony in other states. These Article 1 provisions relating to court communication and assistance are essential tools to assure the effectiveness of the provisions of Article 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as authorized in Article 3.

SECTION 101. SHORT TITLE. This [act] may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Comment

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a guardian or conservator or other protective order is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address conservatorship and other issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

SECTION 102. DEFINITIONS. In this [act]:

(1) "Adult" means an individual who has attained [18] years of age.

(2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state's conservatorship or

protective proceedings statute].

(3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state's guardianship statute].

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(7) "Party" means the respondent, petitioner, guardian, conservator, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a conservator or other order related to management of an adult's property.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

***Legislative Note**: A state that uses a different term than guardian or conservator for the person appointed by the court or that defines either of these terms differently may, but is not encouraged to, substitute its own term or definition. Use of common terms and definitions by states enacting this Act will facilitate resolution of cases involving multiple jurisdictions.*

Comment

The definition of "adult" (paragraph (1)) would exclude an emancipated minor. The Act is not designed to supplant the local substantive law on guardianship. States whose guardianship law treats emancipated minors as adults may wish to modify this definition.

Three of the other definitions are standard uniform law terms. These are the definitions of "person" (paragraph (8)), "record" (paragraph (12)), and "state" (paragraph (14)). Two are common procedural terms. The individual for whom a guardianship or protective order is sought is a "respondent" (paragraph (13)). A person who may participate in a guardianship or protective proceeding is referred to as a "party" (paragraph (7)).

The remaining definitions refer to standard guardianship terminology used in a majority of states. A "guardian" (paragraph (3)) is appointed in a "guardianship order" (paragraph (4)) which is issued as part of a "guardianship proceeding" (paragraph (5)) and which authorizes the guardian to make decisions regarding the person of an "incapacitated person" (paragraph (6)). A "conservator" (paragraph (2)) is appointed pursuant to a "protective order" (paragraph (10)) which is issued as part of a "protective proceeding" (paragraph (11)) and which authorizes the conservator to manage the property of a "protected person" (paragraph (9)).

In most states, a protective order may be issued by the court without the appointment of a conservator. For example, under the Uniform Guardianship and Protective Proceedings Act, the court may authorize a so-called single transaction for the security, service, or care meeting the foreseeable needs of the protected person, including the payment, delivery, deposit, or retention of property; sale, mortgage, lease, or other transfer of property; purchase of an annuity; making a contract for life care, deposit contract, or contract for training and education; and the creation of or addition to a suitable trust. UGPPA (1997) §412(1). It is for this reason that the Act contains frequent references to the broader category of protective orders. Where the Act is intended to apply only to conservatorships, such as in Article 3 dealing with transfers of proceedings to other states, the Act refers to conservatorship and not to the broader category of protective proceeding.

The Act does not limit the types of conservatorships or guardianships to which the Act applies. The Act applies whether the conservatorship or guardianship is denominated as plenary, limited, temporary or emergency. The Act, however, would not ordinarily apply to a guardian

ad litem, who is ordinarily appointed by the court to represent a person or conduct an investigation in a specified legal proceeding.

Section 102 is not the sole definitional section in the Act. Section 201 contains definitions of important terms used only in Article 2. These are the definitions of "emergency" (Section 201(1)), "home state" (Section 201(2)), and "significant-connection state" (Section 201(3)).

SECTION 103. INTERNATIONAL APPLICATION OF [ACT]. A court of this state may treat a foreign country as if it were a state for the purpose of applying this [article] and [Articles] 2, 3, and 5.

Comment

This section addresses application of the Act to guardianship and protective orders issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4, but a court in this country may otherwise apply this Act to a foreign proceeding as if the foreign country were an American state. Consequently, a court may conclude that the court in the foreign country has jurisdiction because it constitutes the respondent's "home state" or "significant-connection state" and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section 203. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Article 3.

This section addresses similar issues to but differs in result from Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because guardianship regimes vary so greatly around the world, particularly in civil law countries, it was concluded that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to recognize the foreign order.

The fact that a guardianship or protective order of a foreign country cannot be enforced pursuant to the registration procedures of Article 4 does not preclude enforcement by the court under some other provision or rule of law.

SECTION 104. COMMUNICATION BETWEEN COURTS.

[(a)] A court of this state may communicate with a court in another state concerning a proceeding arising under this [act]. The court may allow the parties to participate in the

communication. [Except as otherwise provided in subsection (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.]

***Legislative Note**: An enacting state is encouraged to enact the bracketed language so that a record will be created of the communication with the other court, even thought the record is limited to the fact that the communication occurred. In some states, however, a legislative enactment directing when a court must make a record in a judicial proceeding may violate the separation of powers doctrine. Such states are encouraged to achieve the objectives of the bracketed language by promulgating a comparable requirement by judicial rule.*

Comment

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also include communication between courts of different states to facilitate the transfer of a guardianship or conservatorship to a different state under Article 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

This section includes brackets around the language relating to whether a record must be made of any communication with the court of the other state. As indicated by the Legislative Note to this section, the language is bracketed because of a concern in some states that a legislative enactment directing when a court must make a record in a judicial proceeding may violate the doctrine on separation of powers. The language is not bracketed because the drafters concluded that the making of a record is not important. Rather, if concerns about separation of powers leads to the deletion of the bracketed language, the enacting state is encouraged to achieve the objectives of the bracketed language by promulgating a comparable provision by judicial rule.

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who

listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of adult guardianship and protective proceedings suggested a need for greater flexibility.

SECTION 105. COOPERATION BETWEEN COURTS.

(a) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

(1) hold an evidentiary hearing;

(2) order a person in that state to produce evidence or give testimony pursuant to procedures of that state;

(3) order that an evaluation or assessment be made of the respondent;

(4) order any appropriate investigation of a person involved in a proceeding;

(5) forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4);

(6) issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;

(7) issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Section 164.504 [, as amended].

(b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Legislative Note*: A state that permits dynamic references to federal law should delete the brackets in subsection (a)(7). A state that requires that a reference to federal law be to that law on a specific date should delete the brackets and bracketed material, insert a specific date, and periodically update the reference.*

Comment

Subsection (a) of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in adult guardianship and protective proceedings and with the addition of subsection (a)(7), which addresses the release of health information protected under HIPAA. Subsection (b), which clarifies that a court has jurisdiction to respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue concerning a transfer proceeding under Article 3.

This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party's unjustifiable conduct, Section 207(b) authorizes the court to assess against the party all costs and expenses, including attorney's fees.

SECTION 106. TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the

manner in which and the terms upon which the testimony is to be taken.

(b) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

[(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.]

***Legislative Note**: In cases involving more than one jurisdiction, documentary evidence often must be presented that has been transmitted by facsimile or in electronic form. A state in which the best evidence rule might preclude the introduction of such evidence should enact subsection (c). A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c).*

Comment

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

Subsection (a) empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

Subsections (b) and (c) clarify that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence. A state that has adequate exceptions to its best evidence rule to permit the introduction of evidence transmitted by facsimile or in electronic form should delete subsection (c), which has been placed in brackets for this reason.

This section is consistent with and complementary to the Uniform Interstate Depositions

and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

[ARTICLE] 2

JURISDICTION

General Comment

The jurisdictional rules in Article 2 will determine which state's courts may appoint a guardian or conservator or issue another type of protective order. Section 201 contains definitions of "emergency," "home state," and "significant-connection state," terms used only in Article 2 that are key to understanding the jurisdictional rules under the Act. Section 202 provides that Article 2 is the exclusive jurisdictional basis for a court of the enacting state to appoint a guardian or issue a protective order for an adult. Consequently, Article 2 is applicable even if all of the respondent's significant contacts are in-state. Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions. But there are circumstances under Section 203 where a significant-connection state may have jurisdiction even if the respondent also has a home state, or a state that is neither a home or significant-connection state may be able to assume jurisdiction even though the particular respondent has both a home state and one or more significant-connection states. One of these situations is if a state declines to exercise jurisdiction under Section 206 because a court of that state concludes that a court of another state is a more appropriate forum. Another is Section 207, which authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 205 provides that once an appointment is made or order issued, the court's jurisdiction continues until the proceeding is terminated or the appointment or order expires by its own terms.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another type of protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state as provided in Article 3.

The remainder of Article 2 address procedural issues. Section 208 prescribes additional notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state.

SECTION 201. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In this [article]:

(1) "Emergency" means a circumstance that likely will result in substantial harm

to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf;

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under Sections 203 and Section 301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Comment

The terms "emergency," "home state," and "significant-connection state" are defined in

this section and not in Section 102 because they are used only in Article 2.

The definition of "emergency" (subsection (a)(1)) is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section 204 of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b), the emergency proceeding must be dismissed at the request of the court in the respondent's home state.

Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Pursuant to Section 203, a court in the respondent's home state has primary jurisdiction to appoint a guardian or issue a protective order. A court in a significant-connection state has jurisdiction if the respondent does not have a home state and in other circumstances specified in Section 203. The definitions of "home state" and "significant-connection state" are therefore important to an understanding of the Act.

The definition of "home state" (subsection (a)(2)) is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has "lived" for the prior six months. Basing the test on where someone has "lived" may imply that the term "home state" is similar to the concept of domicile. Domicile, in an adult guardianship context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the respondent was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of "significant-connection state" (subsection (a)(3)) is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, subsection (b) of this Section adds a list of factors relevant to adult guardianship and protective

proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section 301(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.

SECTION 202. EXCLUSIVE BASIS. This [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

Comment

Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a guardian or issue a protective order for an adult. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in guardianship and protective proceedings cases. A Legislative Note to Section 503 provides guidance on which provisions need to be repealed or amended. The drafters of this Act concluded that limiting the Act to "interstate" cases was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state's existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

SECTION 203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's

home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and;

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section 206;

(3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) the requirements for special jurisdiction under Section 204 are met.

Comment

Similar to the Uniform Child Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order; the home state (defined in Section 201(a)(2)), followed by a significant-connection state (defined in Section 201(a)(3)), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for the special circumstances specified in Section 204.

While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a guardian or issue a protective order, it is not the only provision. As indicated in the cross-reference in Section 203(4), a court that does not otherwise have jurisdiction under Section 203 may have jurisdiction under the special circumstances specified in Section 204.

Pursuant to Section 203(1), the home state has primary jurisdiction to appoint a guardian or conservator or issue another type of protective order. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section 206 on the basis that another state is a more appropriate forum, or, as provided in Section 205, a court of another state has appointed a guardian or issued a protective order consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section 206. Should the home state not have enacted the Act, Section 203(1) does not require that the declination meet the standards of Section 206.

Once a petition is filed in a court of the respondent's home state, that state does not cease to be the respondent's home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the respondent is physically located. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of "home state," the six-month physical presence requirement is fulfilled or not on the date the petition is filed. *See* Section 201(a)(2).

A significant-connection state has jurisdiction under two possible bases; Section 203(2)(A) and Section 203(2)(B). Under Section 203(2)(A), a significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.

Section 203(2)(B) is designed to facilitate consideration of cases where jurisdiction is not in dispute. Section 203(2)(B) allows a court in a significant-connection state to exercise jurisdiction even though the respondent has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear the case. Jurisdiction may not be exercised by a significant-connection state under Section 203(2)(B) if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment or issuing the order, a petition is filed in the respondent's home state or an objection to the court's jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section 206.

There is nothing comparable to Section 203(2)(B) in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

Pursuant to Section 203(3), a court in a state that is neither the home state or a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the respondent does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As Section 203(a)(3) clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.

SECTION 204. SPECIAL JURISDICTION.

(a) A court of this state lacking jurisdiction under Section 203 has special jurisdiction to do any of the following:

(1) appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically present in this state;

(2) issue a protective order with respect to real or tangible personal property located in this state;

(3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.

(b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

Comment

This section lists the special circumstances where a court without jurisdiction under the general rule of Section 203 has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically located in the state (subsection (a)(1)); (2) the issuance of a protective order for a respondent who owns an interest in real or tangible personal property located in the state (subsection (a)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (a)(3)). If the court has jurisdiction under Section 203, reference to Section 204 is unnecessary. The general jurisdiction granted under Section 203 includes within it all of the special circumstances specified in this section.

When an emergency arises, action must often be taken on the spot in the place where the respondent happens to be physically located at the time. This place may not necessarily be located in the respondent's home state or even a significant-connection state. Subsection (a)(1) assures that the court where the respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of 90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency guardianship procedures. As provided in subsection (b), the emergency jurisdiction is also subject to the authority of the court in the respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment

through repeated temporary appointments.

"Emergency" is specifically defined in Section 201(a)(1). Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Subsection (a)(2) grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

Subsection (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which addresses transfer of a guardianship or conservatorship to another state. A "Catch-22" arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding form another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section 105(b), which grants the court jurisdiction to respond to a request for assistance from a court of another state.

SECTION 205. EXCLUSIVE AND CONTINUING JURISDICTION. Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Comment

While this Act relies heavily on the Uniform Child Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or unavailability of

substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a guardianship or protective order may be modified only upon request to the court that made the appointment or issued the order, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, guardianships and protective proceedings are ordinarily subject to continuing court supervision. Allowing the court's jurisdiction to terminate other than by its own order would open the possibility of competing guardianship or conservatorship appointments in different states for the same person at the same time, the problem under current law that enactment of this Act is designed to avoid. Should the incapacitated or protected person and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Article 3.

The exclusive and continuing jurisdiction conferred by this section only applies to guardianship orders made and protective orders issued under Section 203. Orders made under the special jurisdiction conferred by Section 204 are not exclusive. And as provided in Section 204(b), the jurisdiction of a court in a state other than the home state to appoint a guardian in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.

Article 3 authorizes a guardian or conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the guardian or conservator as guardian or conservator in the accepting state and the court in the transferring estate will terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section 205.

SECTION 206. APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under Section 203 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(b) If a court of this state declines to exercise its jurisdiction under subsection (a), it shall either dismiss or stay the proceeding. The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all

relevant factors, including:

(1) any expressed preference of the respondent;

(2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(3) the length of time the respondent was physically present in or was a legal resident of this or another state;

(4) the distance of the respondent from the court in each state;

(5) the financial circumstances of the respondent's estate;

(6) the nature and location of the evidence;

(7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(8) the familiarity of the court of each state with the facts and issues in the proceeding; and

(9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

Comment

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a guardianship or protective order determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section 203. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and

Enforcement Act (1997) except that the factors in Section 206(c) of this Act have been adapted to address issues most commonly encountered in adult guardianship and protective proceedings as opposed to child custody determinations.

Under Section 203(2)(B), the factors specified in subsection (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the respondent's home state or in another significant-connection state. Under Section 207(a)(3)(B), the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

SECTION 207. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(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 respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent 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 Section 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order 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, 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 [act].

Comment

This section is similar to the Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable conduct," concluding that this issue is best left to the courts. However, a common example could include the unauthorized removal of an adult to another state, with that state acquiring emergency jurisdiction under Section 204 immediately upon the move and home state jurisdiction under Section 203 six months following the move if a petition for a guardianship or protective order is not filed during the interim in the soon-to-be former home state. Although child custody cases frequently raise different issues than do adult guardianship matters, the element of unauthorized removal is encountered in both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, *Parties' Misconduct as Grounds for Declining Jurisdiction Under §8 of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 A.L.R. 5th 650 (1993).

Subsection (a) gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under subsection (a), the unjustifiable conduct need not have been committed by a party.

Subsection (b) authorizes a court to assess costs and expenses, including attorney's fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. Subsection (b) applies only if the unjustifiable conduct was committed by a party and allows for costs and expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

SECTION 208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the

notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

Comment

While this Act tries not to interfere with a state's underlying substantive law on guardianship and protective proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the respondent's home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the respondent's home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion.

SECTION 209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under Section 204(a)(1) or (a)(2), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 203 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under Section 203, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Comment

Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same respondent are brought in more than one state. The provisions of this section, however, have been tailored to the needs of adult guardianship and protective proceedings and the particular jurisdictional provisions of this Act. Emergency guardianship appointments and protective proceedings with respect to property in other states (Sections 204(a)(1) and (a)(2)) are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the respondent's home state but emergency action will be necessary in the place where the respondent is temporarily located, or a petition for the appointment of a conservator will be brought in the respondent's home state but real estate located in some other state needs to be brought under management.

Under the Act only one court in which a petition is pending will have jurisdiction under Section 203. If a petition is brought in the respondent's home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment or issuance of an order in the significant-connection state. Jurisdiction will also be lost in the significant-connection state if the respondent has a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.

Under this section, if the court has jurisdiction under Section 203, it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment or issuing a protective order. If the court does not have jurisdiction under Section 203, it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section 203 there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections 104-106 will sometimes be necessary to determine which court that might be.

[ARTICLE] 3

TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP

General Comment

While this article consists of two separate sections, they are part of one integrated procedure. Article 3 authorizes a guardian or conservator to petition the court to transfer the guardianship or conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the incapacitated or protected person has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Article 3 authorizes a transfer of a guardianship, a conservatorship, or both. There is no requirement that both categories of proceeding be administered in the same state.

Section 301 addresses procedures in the transferring state. Section 302 addresses procedures in the accepting state.

A transfer begins with the filing of a petition by the guardian or conservator as provided in Section 301(a). Notice of this petition must be given to the persons who would be entitled to notice were the petition a petition for an original appointment. Section 301(b). A hearing on the petition is required only if requested or on the court's own motion. Section 301(c). Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section 301(d) (guardianship) or 301(e) (conservatorship) have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section 301(f), it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.

Following issuance of the provisional order by the transferring court, a petition must be filed in the accepting court as provided in Section 302(a). Notice of that petition must be given to those who would be entitled to notice of an original petition for appointment in both the transferring state and in the accepting state. Section 302(b). A hearing must be held only if requested or on the court's own motion. Section 302(c). The court must issue a provisional order accepting the case unless it is established that the transfer would be contrary to the incapacitated or protected person's interests or the guardian or conservator is ineligible for appointment in the accepting state. Section 302(d). The term "interests" as opposed to "best interests" was chosen because of the strong autonomy values in modern guardianship law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a guardian or issuance of a protective order only if the court has a basis for jurisdiction under Sections 203 or 204 other than by reason of the provisional order of transfer. Section 302(h).

The final steps are largely ministerial. Pursuant to Section 301(f), the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the proceeding, subject to local requirements such as filing of a

final report or account and the release of any bond. Pursuant to Section 302(e), the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning guardian or conservator as guardian or conservator in the accepting state.

Because guardianship and conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the guardianship or conservatorship needs to be modified to conform to the law of the accepting state. Section 302(f). The number "90"is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as guardianship or conservatorship plans. This initial period in the accepting state is also an appropriate time to change the guardian or conservator if there is a more appropriate person to act as guardian or conservator in the accepting state. The drafters specifically did not try to design the procedures in Article 3 for the difficult problems that can arise in connection with a transfer when the guardian or conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as conservator or a government agency is acting as guardian. Rather, the procedures in Article 3 are designed for the typical case where the guardian or conservator is legally eligible to act in the second state. Should that particular guardian or conservator not be the best person to act in the accepting state, a change of guardian or conservator can be initiated once the transfer has been secured.

The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing guardianship or conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the respondent is physically present in the state, a problem which Section 204(a)(3) addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the respondent's incapacity and the choice of guardian or conservator. Article 3 eliminates this problem. Section 302(g) requires that the court accepting the case recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator, if otherwise eligible to act in the accepting state.

SECTION 301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP TO ANOTHER STATE.

(a) A guardian or conservator appointed in this state may petition the court to transfer the guardianship or conservatorship to another state.

(b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian or conservator.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the guardian to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(1) the incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(3) plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship and shall direct the conservator to petition for conservatorship in the other state if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds that:

(1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section 201(b);

(2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(3) adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship or conservatorship upon its receipt of:

(1) a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 302; and

(2) the documents required to terminate a guardianship or conservatorship in this state.

SECTION 302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

(a) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to Section 301, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(c) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the

court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) the guardian or conservator is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 301 transferring the proceeding to this state.

(f) Not later than [90] days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(h) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or conservator in this state under [insert statutory references to this state's ordinary procedures law for the appointment of guardian or conservator] if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

[ARTICLE] 4

REGISTRATION AND RECOGNITION OF ORDERS FROM OTHER STATES

General Comment

Article 4 is designed to facilitate the enforcement of guardianship and protective orders in other states. This article does not make distinctions among the types of orders that can be enforced. This article is applicable whether the guardianship or conservatorship is full or limited. While some states have expedited procedures for sales of real estate by conservators appointed in other states, few states have enacted statutes dealing with enforcement of guardianship orders, such as when a care facility questions the authority of a guardian appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if guardianship and protective orders were entitled to recognition in other states.

Article 4 provides for such recognition. The key concept is registration. Section 401 provides for registration of guardianship orders, and Section 402 for registration of protective orders. Following registration of the order in the appropriate county of the other state, and after giving notice to the appointing court of the intent to register the order in the other state, Section 403 authorizes the guardian or conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

SECTION 401. REGISTRATION OF GUARDIANSHIP ORDERS. If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate [county] of this state, certified copies of the order and letters of office.

SECTION 402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator has been appointed in another state and a petition for a protective order is not pending in this state, the conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment

in a court of this state, in any [county] in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

SECTION 403. EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in 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 guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(b) A court of this state may grant any relief available under this [act] and other law of this state to enforce a registered order.

[ARTICLE] 5

MISCELLANEOUS PROVISIONS

SECTION 501. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 503. REPEALS. The following acts and parts of acts are hereby repealed:

(1) .....

(2) .....

(3) .....

Legislative Note: *Upon enactment, the state should repeal existing provisions on subject matter jurisdiction for adult guardianship and protective proceedings. If existing provisions address proceedings for both minors and adults, the provisions should be amended to limit their application to minors. In addition, the state should repeal or limit to minors any existing provisions authorizing transfer of a guardianship or conservatorship proceeding to another state and any provisions authorizing a guardian or conservator to act in another state.*

SECTION 504. TRANSITIONAL PROVISION.

(a) This [act] applies to guardianship and protective proceedings begun on or after [the effective date].

(b) [Articles] 1, 3, and 4 and Sections 501 and 502 apply to proceedings begun before

[the effective date], regardless of whether a guardianship or protective order has been issued.

Comment

This Act applies retroactively to guardianships and conservatorships in existence on the effective date. The guardian or conservator appointed prior to the effective date of the Act may petition to transfer the proceeding to another state under Article 3 and register and enforce the order in other states pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun on or after the effective date. What the Act does not do is change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made or order issued as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the Act affect the validity of already existing appointments even though the court might not have had jurisdiction had this Act been in effect at the time the appointment was made.

SECTION 505. EFFECTIVE DATE. This [act] takes effect.....

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

SUMMARY

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Guardianship and Protective Proceedings Act (UGPPA), which was last revised in 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower scope, dealing only with jurisdiction and related issues. The new UAGPPJA addresses many problems relating to multiple jurisdiction, transfer, and out of state recognition. It has been endorsed by the National Guardianship Foundation and the National College of Probate Judges. Endorsement by the American Bar Association is expected at the ABA's 2008 Mid-Year Meeting.

Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. The UAGPPJA will, when enacted, help effectively to address these problems.

The Problem of Multiple Jurisdiction

Because the U.S. has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently problems arise because the individual has contacts with more than one American state. In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present.

In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Contested cases in which courts in more than one state have jurisdiction are becoming more common. Sometimes these cases arise because the adult is physically located in a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state. There is a need for an effective mechanism for resolving multi-jurisdictional disputes.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

The Problem of Out-of-State Recognition

The Full Faith and Credit Clause of the U.S. Constitution requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and protective proceedings law is one. Sometimes, guardianship or protective proceedings must be initiated in a second state because of the refusal of financial institutions, care facilities, and the courts to recognize a guardianship or protective order issued in another state.

The Proposed Uniform Law and the Child Custody Analogy

Similar problems of jurisdiction existed for many years in the U.S. in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently courts in more that one state had jurisdiction to enter custody orders. But the Uniform Law Commission has approved two uniform acts that have effectively minimized the problem of multiple court jurisdiction in child custody matters: the Uniform Child Custody Jurisdiction Act (UCCJA), approved in 1968, succeeded by the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), approved in 1997. The drafters of the UAGPPJA have elected to model Article 2 and portions of Article 1 of their Act after these child custody analogues. However, the UAGPPJA applies only to adult proceedings. The UAGPPJA is limited to adults in part because most jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to locate jurisdiction in one and only one state except in cases of emergency or in situations where the individual owns property located in multiple states. Article 3 specifies a procedure for transferring guardianship or conservatorship proceedings from one state to another. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains boilerplate provisions common to all uniform acts.

Key Definitions and Terminology (Section 102)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant-connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 102(6)). A "significant-connection state," which is a potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 102(15)). Factors that may be considered in deciding whether a particular respondent has a significant connection include:

> the location of the respondent's family and others required to be notified of the guardianship or protective proceeding;
> the length of time the respondent was at any time physically present in the state and the duration of any absences;
> the location of the respondent's property; and
> the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver's license, social relationships, and receipt of services.

States differ on terminology for the person appointed by the court to handle the personal and financial affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make decisions regarding the person of an "incapacitated person." A "conservator" is appointed in a "protective proceeding" to manage the property of a "protected person." But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate, and in a few states, the terms guardian and conservator are used but with different meanings. The UAGPPJA adopts the terminology as used in the UGPPA. States employing different terms or the same terms but with different meanings may amend the Act to conform to local usage.

Jurisdiction (Article 2)

Section 203 is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions:

> *Home State:* The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another

state.

Significant-connection State: A significant-connection state has jurisdiction if: individual has not had a home state within the past six month or the home states is declined jurisdiction. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant-connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant-connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another state.

Another State: A court in another state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state.

Section 204 addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section 203, a court in the state where the individual is currently physically present has jurisdiction to appoint a guardian in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a conservator or issue another protective order with respect to that property. In addition, a court not otherwise having jurisdiction under Section 203 has jurisdiction to consider a petition to accept the transfer of an already existing guardianship or conservatorship from another state.

The remainder of Article 2 elaborates on these core concepts. Section 205 provides that once a court has jurisdiction, this jurisdiction continues until the proceeding is terminated or transferred. Section 206 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and specifies the factors to be taken into account in making this determination. Section 207 authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section 208 prescribes special notice requirements if a proceeding is brought in a state other than the respondent's home state. Section 209 specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states and taking testimony in another state (Sections 104-106).

Transfer to Another State (Article 3)

Article 3 specifies a procedure for transferring a guardianship or conservatorship to another state. To make the transfer, court orders are necessary both from the court transferring the case and from the court accepting the case. Generally, to transfer the case, the transferring court must find that the individual will move permanently to another state, that adequate arrangements have been made for the individual or the individual's property in the other state, and that the court is satisfied the case will be accepted by the court in the new state. To assure continuity, the court in the original state cannot dismiss the local proceeding until the order from the other state accepting the case is filed with the original court. To expedite the transfer process, the court in the accepting state must give deference to the transferring court's finding of incapacity and selection of the guardian or conservator. Much of Article 3 is based on the pioneering work of the National Probate Court Standards, a 1993 joint project of the National College of Probate Judges and the National Center for State Courts.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and protective orders in other states, Article 4 authorizes a guardian or conservator to register these orders in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the registration state. The Act also addresses enforcement of international orders. To the extent the foreign order violates fundamental principles of human rights, Section 104 permits a court of an American state that has enacted the Act to recognize an order entered in another country to the same extent as if it were an order entered in another U.S. state.

Conclusion

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act will help to resolve many

guardianship issues such as original jurisdiction, registration, transfer, and out-of-state enforcement. It provides procedures that will help to considerably reduce the cost of guardianship and protective proceeding cases from state to state. It should be enacted as soon as possible in every jurisdiction.

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Chicago, Illinois 60602

tel: (312) 450-6600 | fax: (312) 450-6601

EX 4

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

Why States Should Adopt the...

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) received its final approval at the National Conference of Commissioners for Uniform State Laws' (NCCUSL) 2007 annual meeting. The UAGPPJA deals primarily with jurisdictional, transfer and enforcement issues relating to adult guardianships and protective proceedings. There are a number of reasons why every state should adopt the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

•Provides procedures to resolve interstate jurisdiction controversies. The UAGPPJA creates a process for determining which state will have jurisdiction to appoint a guardian or conservator if there is a conflict by designating that the individual's "home state" has primary jurisdiction, followed by a state in which the individual has a "significant-connection." Under certain prescribed circumstances, another state may be chosen if it is the more appropriate forum.

• Facilitates transfers of guardianship cases among jurisdictions. The UAGPPJA specifies a procedure for transferring a guardianship or conservatorship to another state and for accepting a transfer, helping to reduce expenses and save time while protecting persons and their property from potential abuse.

• Provides for recognition and enforcement of a guardianship or protective proceeding order. The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register these orders in other states.

• Facilitates communication and cooperation between Courts of different jurisdictions. Permits communication between courts and parties of other states, records of the communications, and jurisdiction to respond to requests for assistance from courts in other states.

• Addresses emergency situations and other special cases. A court in the state where the individual is physically present can appoint a guardian in the case of an emergency. Also, if the individual has real or tangible property located in a certain state, the court in that jurisdiction can appoint a conservator for the property located there.

• Authorized guardians to exercise the powers authorized in the order and addresses international orders. UNIFORMITY This Act will provide uniformity and reduce conflicts among the states.

The UAGPPJA will also help save time for those who are serving as guardians and conservators, allowing them to make important decisions for their loved ones as quickly as possible. Every state should act quickly to adopt the Uniform Adult Guardianship and Protective Proceeding Act.

111 N. Wabash Ave., Suite 1010
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alzheimer's association

the compassion to care, the leadership to conquer

Adult Guardianship Jurisdiction Case Statement

Position

The Alzheimer's Association supports the adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) by all states.

Background

Due to the impact of dementia on a person's ability to make decisions and in the absence of other advanced directives, people with Alzheimer's disease may need the assistance of a guardian. Advocating for the adoption of a more uniform and efficient adult guardianship system will help remove uncertainty for individuals with dementia in crisis and help them reach appropriate resolution faster.

Adult guardianship jurisdiction issues commonly arise in situations involving snowbirds, transferred/long-distance caregiving arrangements, interstate health markets, wandering, and even the occasional incidence of elderly kidnapping. The process of appointing a guardian is handled in state courts. The U.S. has 55 different adult guardianship systems, and the only data available is from 1987, which estimated 400,000 adults in the U.S. have a court-appointed guardian. Even though no current data exists, demographic trends suggest that today this number probably is much higher.

Proposed Legislation

Often, jurisdiction in adult guardianship cases is complicated because multiple states, each with its own adult guardianship system, may have an interest in the case. Consequently, it may be unclear which state court has jurisdiction to decide the guardianship issue. In response to this common jurisdictional confusion, the Uniform Law Commission developed UAGPPJA. The legislation establishes a uniform set of rules for determining jurisdiction, and thus, simplifies the process for determining jurisdiction between multiple states in adult guardianship cases. It also establishes a framework that allows state court judges in different states to communicate with each other about adult guardianship cases.

To effectively apply UAGPPJA in a case, all states involved must have adopted UAGPPJA. Thus, UAGPPJA only will work if a large number of states adopt it. In order for a state court system to follow UAGPPJA, the state legislature must first pass UAGPPJA into law. Currently, only Alaska, Colorado, Delaware and Utah have enacted UAGPPJA. Our goal in the next year is to significantly increase the number of states that adopt UAGPPJA.

The more states that enact UAGPPJA in identical format, the simpler the adult guardianship process will become. In an ideal future, enactment of UAGPPJA by all states will allow the question of jurisdiction in adult guardianship situations to be settled more easily and provide predictable outcomes in adult guardianship cases.

Existing Problems of Jurisdiction

To explain why the jurisdictional issues related to adult guardianship are critical for individuals with dementia, here are a few common scenarios:

Scenario #1 Transferred Caregiving Arrangements: Jane cares for her mother who has dementia in their home in Texas. A Texas court has appointed Jane as her mother's legal guardian. Unfortunately, Jane's husband loses his job, and Jane and her family move to Missouri. Neither Texas nor Missouri have enacted UAGPPJA. Upon arriving in Missouri, Jane attempts to transfer her Texas guardianship decision to Missouri, but she is told by the court she must refile for guardianship under Missouri law because Missouri does not recognize adult guardianship rights made in other states. This duplication of effort burdens families both financially and emotionally.

Scenario #2 Snowbirds: Alice and Bob are an elderly couple who are residents of New York, but they spend their winters at a rental apartment in Florida. Alice has Alzheimer's disease, and Bob is her primary caregiver. In January, Bob unexpectedly passes away. When Steve, the couple's son, arrives in Florida, he realizes that his mother is incapable of making her own decisions and needs to return with him to his home in Nebraska. Florida, New York and Nebraska have not adopted UAGPPJA. Steve decides to institute a guardianship proceeding in Florida. The Florida court claims it does not have jurisdiction because neither Alice nor Steve have their official residence in Florida. Steve next tries to file for guardianship in Nebraska, but the Nebraska court tells Steve that it does not have jurisdiction because Alice has never lived in Nebraska, and a New York court must make the guardianship ruling. If these three states adopted UAGPPJA, the Florida court initially could have communicated with the New York court to determine which court had jurisdiction.

Scenario #3 Interstate Health Markets (local medical centers accessed by persons from multiple states): Jack, a northern Indiana man with dementia, is brought to a hospital in Chicago because he is having chest pains. As it turns out, he is having a heart attack. While recuperating in the Chicago hospital, it becomes apparent to a hospital social worker that Jack's dementia has progressed, and he now needs a guardian. Unfortunately, Jack does not have any immediate family, and his extended family lives at a distance. The social worker attempts to initiate a guardianship proceeding in Indiana. However, she is told that because Jack does not intend to return to Indiana, she must file for guardianship in Illinois. The Illinois court then refuses guardianship because Jack does not have residency in Illinois. Even though the Indiana court is located within miles of the Illinois state line, no official channel exists for the two state courts to communicate about adult guardianship because neither state has enacted UAGPPJA.

The final example demonstrates how the process for resolving a jurisdictional adult guardianship issue is simplified if the states involved have adopted UAGPPJA:

> **Scenario #4 Long-Distance Caregiving:** Sarah, an elderly woman living in Utah, falls and breaks her hip. She and her family decide it is best that she recover from her injuries at her daughter's home in Colorado. During Sarah's stay in Colorado, her daughter, Lisa, realizes her mother's cognition is impaired, and she is no longer capable of making independent decisions. Lisa decides to petition for guardianship in Colorado. Thankfully, both Colorado and Utah have adopted UAGPPJA, and the Colorado court can easily communicate with the Utah court. Following the rules established in UAGPPJA, the Colorado court asks the Utah court if any petitions for guardianship for Sarah have been filed in Utah. The Utah court determines that no outstanding petitions exist and informs Colorado that it may take jurisdiction in the case. Thus, although Utah is Sarah's home state, Colorado may make the guardianship determination.

The situations described above demonstrate that adult guardianship issues frequently can intersect with the needs of people with Alzheimer's disease and their families. Not surprisingly, complicated adult guardianship issues often percolate in situations where people failed to engage in comprehensive end of life planning.

As the Alzheimer's Association works towards increasing awareness of the need for advanced planning, advocating for a more workable adult guardianship systems is important. The current systems are barriers to addressing end of life issues, in part, due to the disorganized array of state adult guardianship laws and the lack of communication between states. Simplifying one aspect of the adult guardianship system by enacting UAGPPJA may encourage more states to dedicate increased resources to meaningful end of life systems change.

<u>Contact Information</u>

For more information on the Alzheimer's Association's efforts to pass UAGPPJA in your state, please contact: Laura Boone, State Policy Specialist, Alzheimer's Association, 202.638.8668, laura.boone@alz.org.

Conference of Chief Justices
Conference of State Court Administrators

Association Services
300 Newport Avenue
Williamsburg, Virginia 23185
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FAX: (757) 259-1520

CCJ PRESIDENT
Honorable Margaret H. Marshall
Chief Justice
Supreme Judicial Court of Massachusetts
John Adams Courthouse
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COSCA PRESIDENT
Stephanie J. Cole
Administrative Director of the Courts
Alaska Court System
303 K Street
Anchorage, Alaska 99501
(907) 264-0547
(907) 264-0881 (fax)

September 29, 2008

The Honorable Martha Lee Walters
President, The National Conference of Commissioners on Uniform State Laws
111 N. Wabash Avenue, Suite 1010
Chicago, Illinois 60602

Dear Ms. Walters:

At the 60th Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators, the Conferences adopted the attached resolution on July 30, 2008. The resolution, **In Support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act** was recommended for adoption by the

We share a copy of this resolution with you for your information and the information of your membership. This resolution reflects the policy position of the Conferences.

If you need additional information or assistance, please feel free to contact us or Kay Farley or Jose Dimas at the National Center for State Courts. Ms. Farley can be reached at (703) 841-5601 or kfarley@ncsc.org. Mr. Dimas can be reached at (703) 841-5610 or jdimas@ncsc.org.

Sincerely,

Margaret Marshall

Chief Justice Margaret H. Marshall
President
Conference of Chief Justices

Stephanie J. Cole

Ms. Stephanie J. Cole
President
Conference of State Court Administrators

EX 9

Conference of Chief Justices
Conference of State Court Administrators

Resolution 5

In Support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

WHEREAS, the Conference of Chief Justices and the Conference of State Court Administrators recognize both the challenges for guardianship and protective proceedings when the parties have connections to multiple states and the benefits of clear and uniform jurisdiction rules in these multi-state cases; and

WHEREAS, the establishment of procedures to resolve interstate jurisdictional problems and facilitate transfers of guardianship cases among jurisdictions were key recommendations of the 2001 Wingspan National Guardianship Conference; and

WHEREAS, the Uniform Laws Commission, previously known as the National Conference of Commissioners of Uniform State Laws, convened a committee of experts and drafted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) to address existing problems; and

WHEREAS, the UAGPPJA (1) provides for a process of communication and cooperation between courts in different jurisdictions; (2) specifies which court has jurisdiction to appoint a guardian or conservator; (3) limits jurisdiction to the courts of one and only one state except in cases of emergency or in situations where the individual owns property in multiple states; (4) establishes a procedure for transferring a guardianship or conservatorship case from one state to another; (5) facilitates enforcement of guardianship and protective orders in other states by authorizing registration of orders; and (6) provides for registered orders to be entitled to full faith and credit; and

WHEREAS, adoption and implementation of the UAGPPJA will effectively address current jurisdictional problems and result in uniformity in both state law and practice;

NOW, THEREFORE, BE IT RESOLVED that the Conferences commend the work of the Uniform Laws Commission in developing this model legislation and recommend that states consider adoption of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Adopted as proposed by the CCJ/COSCA Courts, Children and Families Committee July 30, 2008.

NAELA
National Academy of Elder Law Attorneys, Inc.
Leading the Way in Special Needs and Elder Law

1604 NORTH COUNTRY CLUB ROAD ● TUCSON, ARIZONA 85716-3102 ● 520/881-4005 ● 800/395-7204 ● 520/325-7925 FAX ● www.naela.org

February 13, 2008

David Nixon, Esq.
National Conference of Commissioners on Uniform State Laws
211 E. Ontario St., Suite 1300
Chicago, IL 60611

Dear Commissioner Nixon:

I am delighted to inform you that at the November, 2007 board meeting, the National Academy of Elder Law Attorneys (NAELA) Board of Directors voted unanimously to endorse the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). NAELA is a non-profit association that assists lawyers, bar organizations and others who work with older clients and their families. Established in 1987, the Academy provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

As you know, NAELA was actively engaged in the drafting process of the UAGPPJA by sending representatives to the meetings and providing numerous comments on the drafts. NAELA strongly supports the UAGPPJA because it is designed to help solve the increasing problems of multiple jurisdiction across state line, problems relating to transfer, and out of state recognition issues that negatively impact our clients.

Contested cases in which courts in more than one state have jurisdiction are becoming more frequent. There is a need for an effective mechanism for resolving multi-jurisdictional disputes. Article 2 of the UAGPPJA is intended to provide such a mechanism. Oftentimes, problems arise even absent a dispute. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect. Article 3 of the UAGPPJA is designed to provide an expedited process for making such transfers, thereby avoiding the need to re-litigate incapacity and whether the guardian

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355 Lexington Avenue, 15th Floor, New York, NY 10017
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NAELA
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or conservator appointed in the first state was an appropriate selection. Article 4 of the UAGPPJA also helps to resolve important problems relating to out-of-state recognition and enforcement. These provisions will greatly improve the nation's guardianships system and save many of our clients and their families time and money when resolving these issues.

The mission of the National Academy of Elder Law Attorneys is to establish NAELA members as the premier providers of legal advocacy, guidance and services to enhance the lives of people with special needs and people as they age. Helping to enact the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act across the United States will help our organization fulfill our important mission.

Sincerely,

G. Mark Shalloway

G. Mark Shalloway, CELA
President, National Academy of Elder Law Attorneys

NATIONAL COLLEGE OF PROBATE JUDGES

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

WHEREAS guardianship and protective proceedings for adults has left Courts facing many dilemmas and challenges concerning jurisdiction over these proceedings,

WHEREAS the National College of Probate Judges has performed groundbreaking work on this issue in the National Probate Court Standards for some time in order to provide statutory direction for this complex problem,

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward this work by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings order of a foreign country, provides for a process of communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings, provides that a court on its own motion may order the testimony of a person to be taken across state lines and may prescribe the manner in which and terms upon which the testimony is taken,

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act, if enacted, will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it,

WHEREAS the National College of Probate Judges is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the American Association of Retired Persons, National Guardianship Association, and the National Association of Elder Law Attorneys,

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions.

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults,

THEREFORE BE IT RESOLVED that the National College of Probate Judges supports the efforts of the National Conference of Commissioners on Uniform State Laws in its effort to create the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

National Guardianship Foundation

P.O. Box 5704 - Harrisburg, PA 17110 - (717) 238-4689 phone - (717) 238-9985 fax
www.guardianship.org

May 7, 2007

National Conference of Commissioners on
Uniform State Laws (NCCUSL)
c/o David G. Nixon, Chairman
211 E. Ontario Street
Suite 1300
Chicago, IL 60611

Dear Mr. Nixon:

The National Guardianship Foundation (NGF) Board of Trustees met in late April and voted unanimously to endorse the attached resolution related to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Should you have any questions, please don't hesitate to contact me directly. Thank you for your hard work on this important issue.

Sincerely,

Denise R. Calabrese

Denise R. Calabrese
Executive Director

cc: NGF President Gary Beagle
NGA Executive Director Terry Hammond
David English

NATIONAL GUARDIANSHIP FOUNDATION

RESOLUTION IN SUPPORT OF:

THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

WHEREAS population mobility has left courts facing many dilemmas and challenges concerning which of several states have jurisdiction over guardianship and protective proceedings;

WHEREAS the National Conference of Commissioners on Uniform State Laws endeavors to carry forward the groundbreaking work of the National College of Probate Judges in its National Probate Court Standards on interstate jurisdiction transfers by drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act;

WHEREAS this Uniform Act, if enacted, will fulfill a key recommendation of the 2001 Wingspan National Guardianship Conference by providing procedures to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions;

WHEREAS the Act provides for the recognition and enforcement of a guardianship or protective proceedings orders, and facilitates the communication and cooperation between Courts of different jurisdictions concerning guardianship or protective proceedings;

WHEREAS the Act provides for a method of determining the appropriate initial forum for such proceedings, for a method of obtaining an order to transfer jurisdiction over such proceedings to another state, and for the recognition and registration of guardianship or protective orders across state lines,

WHEREAS the application and construction of this Uniform Act will promote uniformity of the law with respect to jurisdictional issues of guardianship and protective proceedings for adults among states that enact it;

WHEREAS the National Guardianship Foundation is involved in the process of drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act with the help of the AARP, American Bar Association, the National Guardianship Association, the National College of Probate Judges, the American College of Trust and Estate Counsel, the National Academy of Elder Law Attorneys, and other interested groups; and

WHEREAS the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, if enacted, can help effectively address the dilemmas and challenges concerning jurisdiction of guardianship and protective proceedings for adults;

THEREFORE BE IT RESOLVED that the National Guardianship Foundation supports the efforts of the National Conference of Commissioners on Uniform State Laws to promulgate the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

CANHR *Long Term Care Justice and Advocacy*
CALIFORNIA ADVOCATES FOR NURSING HOME REFORM

650 Harrison Street, 2nd Floor • San Francisco, California 94107 • (800) 474-1116 • www.canhr.org • canhrmail@canhr.org

December 3, 2010

California Law Revision Commission
Brian Herbert, Executive Secretary
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303-4739

Re: Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Dear Mr. Herbert:

On behalf of California Advocates for Nursing Home Reform (CANHR), I want to thank the Commission for including in its priorities for 2011 a study to compare existing California law with the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in order to make recommendations regarding the adoption of the uniform act in California.

Over the years, our office has attempted to assist numerous consumers who have faced the difficulties of conflicting jurisdictional issues related to guardianships. The stress on families and the burdensome costs associated with attempting to resolve these issues cannot be overstated. The problems of multiple guardianship jurisdictions and out of state transfers of guardianships have increased substantially, and the adoption of a uniform approach to resolving these problems would greatly benefit our consumers.

I thank the Commission for including this issue in your priorities for 2011.

Sincerely,

Patricia L. McGinnis
Executive Director

PROFESSIONAL FIDUCIARY ASSOCIATION OF CALIFORNIA
One Capitol Mall, Suite 320, Sacramento, CA 95814
Phone: (916) 669-5330; Fax: (916) 444-7462; www.pfac-pro.org

October 19, 2010

Mr. Brian Hebert, Executive Director
California Law Revision Commission
UC Davis Law School
400 Mrak Hall Drive,
Davis, CA 95616

Dear Mr. Hebert:

The Professional Fiduciary Association of California (PFAC) is writing to you today to urge the California Law Revision Commission to include as a top priority in 2011 consideration of the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPJA).

As of this date, twenty states have passed UAGPPJA legislation and another twenty-three states have indicated their intention to introduce legislation in the coming year. Other organizations close to the issue have supported this Act, e.g., the Alzheimer's Association, the Congress of California Seniors to name two.

The UAGPPJA was developed by the Uniform Law Commission in response to a number of factors that complicate adult guardianship. Adult guardianships have become more common. People are living longer. People and their families are more mobile and move between states with significantly differing adult guardianship procedures.

The Uniform Law Commission proposal is intended to conquer the challenges of differing and sometimes conflicting adult guardianship procedures between states – to achieve continuity of care by minimizing delays in resolving guardianship jurisdictional issues.

Thank you for your consideration of this request when you set your priorities for 2011. We look forward to working with the Commission on this important subject.

Sincerely,

Jackie A. Miller
Executive Director

Office of the
State Long-Term Care Ombudsman
1300 National Drive, Suite 200
Sacramento, California 95834-1995
916-419-7510 Voice
916-928-2503 Facsimile
800-231-4024 CRISISline
http://www.aging.ca.gov

January 10, 2011

Brian Herbert, Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, California 94303-4739

Dear Mr. Herbert:

The Office of the State Long-Term Care Ombudsman (OSLTCO) supports the efforts of the Alzheimer's Association to promote the adoption of the Uniform Law Commission's Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA).

As you may be aware, the Long-Term Care Ombudsman program (LTCOP) identifies, investigates, and resolves complaints made by or on behalf of residents of long-term care facilities. In recent years, LTCOPs across the country have been providing services to an increasing number of older persons and other residents of long-term care facilities who lack decision-making capacity, have no identified legal representative or surrogate decision maker and are in need of a conservatorship.

The UAGPPJA establishes a uniform set of rules for determining jurisdiction between multiple states in adult guardianship cases and establishes a framework that allows state court judges in different states to communicate with each other about adult guardianship cases.

I would like to acknowledge and thank the Commission for including in its priorities for 2011 a study to compare existing California law with the UAGPPJA in order to make recommendations regarding the possible adoption of the Act in California.

Sincerely,

Joseph Rodrigues
State Long-Term Care Ombudsman

cc: Jackie McGrath, Alzheimer's Association

EMAIL FROM PETER STERN, TEXCOM (11/9/10)

Re: TEXCOM review of Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

Brian:

I am a former chair of TEXCOM, presently in my last year as a former officer, and for many years I chaired TEXCOM's incapacity committee. I was one of the principal TEXCOM members tasked with following the conservatorship reform process in 2006. TEXCOM delegated to me the task of following the UAGPPJA — I hope my memory is correct in naming the acronym — and Saul Bercovitch, our legislative counsel, has informed TEXCOM that CLRC is going to pick up this project. I have assembled a team on TEXCOM to work on legislation to implement so far as it is possible consonant with California law this Uniform Law. In light of the news that CLRC will be doing the same thing, I will instead instruct my team to prepare reviews and critiques of parts of the law to be held in reserve, so that TEXCOM can be a helpful partner in the future when CLRC would like our input.

I am attaching a memo I prepared for TEXCOM when we first started our work on this project nearly two years ago. Please keep in touch with me regarding CLRC's work on the Uniform Law.

Peter S. Stern

Comments on the Uniform Adult Guardianship and Protective Proceedings Act (UAGPPA) for TEXCOM 1-10-09 meeting:

Throughout, the Act uses "guardianship" to refer to a conservatorship of the person and "protective proceeding" to refer to conservatorship of the estate. Any attempt to incorporate this Act in California will require rewriting the Act to remove the word "guardian" throughout when referring to a California procedure and to replace "guardian" with "conservator," "guardianship" with "conservatorship of the person," and "protective proceeding" with "conservatorship of the estate."

A major concern the Legislature should have with this bill is the extent to which it would allow a person residing in California, or whose property is in California, to be subject to a less protective law based on the adult guardianship or conservatorship laws of another jurisdiction. As the introduction to the Act states, one exception to Full Faith and Credit is for guardianship/conservatorship proceedings, and for good reason: California has adopted procedures for establishing incapacity, for protection of the residence of a conservatee, for enhancing the autonomy of conservatees, for defining the circumstances under which conservatorships may be created, that may be much more protective of the conservatee than what is provided for in sister state jurisdictions. Although the UAGPPA refers to acting within the scope of the laws of the home state, it may not be so simple to comply with such laws.

Article 1, "General Provisions," provides primarily background and definitions. Note Sections 105-106 on obtaining evidence in sister states.

Article 1: General Provisions:
Section 101—Short Title—Presumably California keeps the official designation, even though we refer throughout to conservatorships, not guardianships.

Section 102—Definitions:
The most important definitions are at (6) ("Home state") and (15) ("Significant – connection state")
--"home state" is where the proposed conservatee was physically present, including temporary absences, for the six months prior to the filing of a proceeding

--"significant connection state" is a state with which the individual has significant connection, including consideration of: location of the individual's family and persons entitled to notice; the length of time the individual was in the state; location of the individual's property; and extent to which there are other ties: voting registration, filing of tax returns, vehicle registration, driver's license, social relationships, receipt of services.

California should combine the definitions of guardian and conservator throughout and should recast descriptions of the proceedings to conservatorships of the person and/or conservatorships of the estate.
.

Section 103—Permits treatment of a foreign country as if it were a state.

Section 104 through 106 deal with communication and cooperation between courts in different states. Section 105 permits a court in one state to ask a court in another state to hold an evidentiary hearing, order a person to produce evidence in that hearing, order an evaluation, assessment, or investigation, issue subpoenas, issue orders for release of confidential information including HIPAA protected medical information;

Section 106 permits taking testimony by deposition or other means in another state and provides that evidence cannot be excluded because it is not original, if transmitted by means that do not provide the original evidence.

Article 2, Jurisdiction: Sections 201-209:

Section 201 defines "emergency" to apply only to conservatorship of the person situations—circumstances that will likely result in *substantial harm* to the individual's health, safety, or welfare and where appointment of conservator is necessary because no other person has authority to and willingness to act. This definition is not necessarily congruent with PC 1801(a) or (b), or PC 2250(b) or 2250.2(b), and it does not provide for conditions relating to the need for a temporary conservatorship of the estate. Reference to "guardian" to be changed to "conservator."

Section 202 describes the Act as providing exclusive basis for jurisdiction by a court in California.

Section 203 describes initial jurisdiction to appoint a conservator:

1. If the state is the individual's home state on the date the petition is filed, or was the home state within six months before the date the petition was filed;
2. or , the state is a significant connection state, and
    a. there was no home state on the date the petition was filed or within six months before the petition was filed; or
        i. a court of that state [query, which state? The home state?] has declined to exercise jurisdiction under Section 206 because this state is a more appropriate forum;

    b. or: no petition has been filed in a home state or in another significant connection state; and no objection to the jurisdiction of this state has been filed, and a court in this state concludes it is an appropriate forum under the factors set forth in Section 206;
3. or: this state was not the home state on the date the petition was filed, or within six months; nor was this state a significant connection state; and all such states have declined to exercise jurisdiction under 206 because this state is the more appropriate forum; or no court has jurisdiction under (1) or (2) and jurisdiction in this state is consistent with the US and state constitutions.

All references to guardian have to be changed to conservator.

Section 204 outlines special cases where jurisdiction is lacking under 203:

(a)(1): court can appoint conservator in an emergency situation for up to 90 days for a person physically present in this state. [presumably this provision and the definition of emergency should be conformed to California law and rules for temporary conservatorship appointments]

(a)(2): court can issue protective order with regard to real or tangible personal property located in this state. [no provision for intangibles]

(a)(3): court can appoint conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state to this one has been issued under Section 301.

(b) where the state in which the petition for emergency appointment is brought is not the individual's home state on the date the petition was filed in the previous six months, the court in this state shall *dismiss the proceeding* or *vacate the appointment* at the direction of a court in the individual's home state.

Section 205 provides that except as described in Section 204 once the appointment of conservator is made, the court that has made the order has exclusive and continuing jurisdiction over the proceeding until this court terminates the proceeding or the order expires by its own terms.

Section 206 permits a court having jurisdiction under Section 203 to decline to exercise its jurisdiction if it determines that another state is a more appropriate forum. If it declines jurisdiction, it shall either dismiss or stay the proceeding. There are nine factors to be considered by the court in determining whether it is an appropriate forum.

Section 207 describes declining jurisdiction by reason of unjustifiable conduct, presumably by the petitioning party who brought the matter to the court. This means, for instance, there was a home state that was not disclosed in the filings or something similar. Under these circumstances the court may:

(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 individual or protection of the individual's property or stay the proceedings until the appropriate petition has been filed in another court
(3) continue to exercise jurisdiction if circumstances are appropriate.

The court has authority to assess sanctions including attorney fees, investigative fees, and court costs against the person who engaged in unjustifiable conduct to invoke the court's jurisdiction.

Section 208 requires notice on persons in the individual's home state who would be entitled to notice according to the rules of that state, using the notice procedures of this state, if this state is not the individual's home state.

Section 209 deals with proceedings in more than one state. Except for the special cases in Section 204, if there are petitions filed in two or more states:

(1) if the court in this state has jurisdiction under Section 203, it may proceed unless a court in another state acquires jurisdiction under Section 203 before the appointment or issuance of the order.
(2) If the court in this state does not have jurisdiction under 203, the court shall stay the proceedings and communicate with the court in the other state. If the court does not determine that this court is the more appropriate forum, the court in this state shall dismiss the petition.

Article 3 involves transfer of jurisdiction and contains Sections 301 to 304. This part of the act has to be meshed with Sec. 2352(d)—transfer of proceedings where conservatee for whom residence has been fixed out of state is going to stay in another state.

Section 301 provides for the transfer of a conservatorship to another state. Our present section 2352(d) contemplates filing for conservatorship in the new state four months after the conservatee has left California. Section 301 calls for filing a petition to carry out the transfer, which will be granted upon the court finding that:

1. the individual is physically located or reasonably expected to be physically located in the new state;
2. no objection has been made, or if one has been made, the objector has not established that the transfer would be contrary to the interests of the individual.
3. the court is satisfied that plans for care and services for the individual in the new state are reasonable and sufficient; and
4. the court is satisfied that the transfer will be accepted;

Section 301 contains parallel provisions for guardianship (person) and conservatorship(estate). The section would be redrafted to incorporate findings relating to adequacy of provisions for care of person and estate.

Section 302 provides for the transfer of a conservatorship from another state to California. The procedure in 302 would be triggered by granting an order under Section 301 in another state. The conservator would file a petition to accept the conservatorship, to which the provisional order of the other state's court would be attached. Notice provisions would go to all parties entitled to notice under Section 1821. The court would hold a hearing and would issue a provisional order approving the petition unless there is an objection made and the objector establishes that the transfer would be contrary to the interests of the individual.

Section 302 (e) states that an order accepting the conservatorship from another state recognizes the order, including the determination of the individual's incapacity and the appointment of conservator, if the person is eligible to act as conservator in this state.

One concern California courts ought to have is whether the incapacity determination of the sister state meets California's standards. A California court should reject a petition for transfer where the incapacity finding has been based on standards that

do not meet the test of California's standards under, e.g., DPCDA. The statute should be amended to provide for provisional acceptance subject to such determination, if not outright rejection of the transfer.

Sections 303 and 304 provide respectively for issuance of final orders in the transferring court and the accepting court.

Article 4 (Sections 401-403) provides for registration and recognition of conservatorships in sister state jurisdictions.

Section 401 and 402 provide for registration of the conservatorship order from a sister state in California (401—for matters pertaining to the person; 402—for matters pertaining to the estate. These two sections should be combined into one section in California.

Section 403 provides that an order, once registered in this state, permits the conservator to exercise all powers authorized in the order "except as prohibited under the laws of this state." This raises the question of harmonizing the actions of an out of state conservator with permitted powers, i.e., investment powers, change of residence, etc., in California law.

Article 5 (Sections 501-505) contains miscellaneous provisions, such as intent of the statute, relation to the electronic signatures act, effective date, and transitional provisions.

General conclusions and considerations:

1. What role should TEXCOM play in endorsing or moving to adopt this statute? We should examine the history of prior uniform laws. I would recommend referring this to CLRC, with a recommendation that the uniform Act provides for needed ground rules when there is a struggle in more than one jurisdiction to take responsibility for an incapacitated person or to control the property of such a person.

2. This Act will require substantial redrafting to fit California law. Standards for capacity determination; for basic threshold findings for establishment of conservatorships; for roles of professional fiduciaries; to mention only a few areas, will have to be redrafted.

3. Coordinating authority of an out of state conservator whose powers are registered in California (Section 403) will be a chore that will require a harmonization process in every case.

4. The core of the Act is Article 2 on jurisdiction. The Act does provide ground rules, much needed, to determine where a conservatorship proceeding should be filed.

Respectfully submitted,
Peter S. Stern January 5, 2009