
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 7, 2013
SACRAMENTO

A meeting of the California Law Revision Commission was held in Sacramento on February 7, 2013.

Commission:

Present: Xochitl Carrion, Chairperson
Damian Capozzola, Vice-Chairperson
Diane Boyer-Vine, Legislative Counsel
Judge Patricia Cowett (ret.)
Victor King
Susan Duncan Lee
Crystal Miller-O'Brien

Absent: Senator Ted Lieu
Assembly Member Roger Dickinson
Taras Kihiczak

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

Consultants: None

Other Persons:

Marjorie Murray, Center for California Homeowner Association Law, California Alliance for Retired Americans
Theresa Renken, Alzheimer's Association
Tom Surh
Jennifer Wilkerson, State Bar Trusts and Estates Section, Executive Committee

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1 MINUTES OF DECEMBER 13, 2012, COMMISSION MEETING

2 The Commission approved the Minutes of the December 13, 2012,
3 Commission meeting as submitted by the staff.

4 ADMINISTRATIVE MATTERS

5 **Report of Executive Director**

6 The Executive Director reported on the following matters:

- 7 • Senator Ted Lieu was appointed to serve as the Commission's
- 8 Senate member.
- 9 • Kristin Burford was hired by the Commission as a half-time staff
- 10 counsel.
- 11 • The Executive Director is holding brief introductory meetings with
- 12 newly elected legislators, to provide them with background on the
- 13 Commission's function and current work.

14 The Executive Director introduced legal externs Alexander Rich and Amanda
15 Smith. Mr. Rich and Ms. Smith are students at the U.C. Davis School of Law.

16 **Meeting Schedule**

17 The Commission considered Memorandum 2013-1, discussing the
18 Commission's meeting schedule. The Commission granted the Executive
19 Director discretion to make minor changes to the regular meeting starting and
20 stopping times, to better accommodate the schedules of those who must fly to
21 meetings.

1 **Incompatible Activities**

2 The Commission considered Memorandum 2013-2, proposing revisions to the
3 Commission's Incompatible Activities Statement. The Commission approved the
4 proposed revisions, subject to the following decisions:

- 5 • Proposed paragraph (c)(1) was revised as follows:

6 (1) The outside work would ~~involve advocating for the passage,~~
7 ~~defeat, or veto of legislation in California~~ violate Government Code
8 Section 8288.

- 9 • If a decision of the Executive Director is appealed, the appeal can
10 be brought to the Chairperson for a provisional decision (pending
11 an appeal to the full Commission) or can be brought directly to the
12 full Commission.

13 The staff will prepare a draft revision, consistent with those decisions, for
14 submission to the Department of Personnel Administration.

15 On a related point, the Commission sees no conflict if the Executive Director
16 were to teach a law school course on legislative process.

17 **Handbook of Practices and Procedures**

18 The Commission considered Memorandum 2013-3, proposing revisions to the
19 Commission's *Handbook of Practices and Procedures*. The Commission approved
20 the proposed revisions, subject to the following decisions:

- 21 • A rule should be added mandating that staff self-report outside
22 activities that could conflict with their duties to the Commission.
23 The staff will prepare proposed language for consideration at a
24 future meeting.
- 25 • Rule 2.3 was revised as proposed. Parallel language should be
26 added to the footnote set out on the first page of all staff
27 memoranda, as indicated on pages 2-3 of Memorandum 2013-3.
- 28 • Proposed Rule 2.5.5 was not approved. Instead, the second
29 paragraph of Rule 2.5.3 was revised to indicate that it applies to
30 both written and oral communications.

31 On a related point, the Commission directed staff to attempt to arrange a
32 video conference for the Commission's October meeting, with a satellite location
33 in Los Angeles.

1 **Open Government Laws**

2 The Commission considered Memorandum 2013-4, discussing “open
3 government” statutes applicable to the Commission. No Commission action was
4 required or taken in connection with the memorandum.

LEGISLATIVE PROGRAM

5 The Commission considered Memorandum 2013-5, reporting on the
6 Commission’s 2013 legislative program.

7 In connection with the discussion of the recommendation on *Commercial and*
8 *Industrial Common Interest Developments*, 42 Cal. L. Revision Comm’n Reports 1
9 (2012), the Commission noted that Memorandum 2013-5 misspelled the name of
10 Jack Zorman.

11 In connection with the discussion of the recommendation on *Third Decennial*
12 *Review of Exemptions from Enforcement of Money Judgments*, 42 Cal. L. Revision
13 Comm’n Reports 293 (2012), the Commission approved the proposed revisions to
14 the Commission’s recommendation and the pending legislation.

15 STUDY H-855 — COMMON INTEREST DEVELOPMENT:
16 STATUTORY CLARIFICATION AND SIMPLIFICATION OF CID LAW

17 The Commission considered Memorandum 2013-6 and its First Supplement,
18 discussing whether Civil Code Section 4205 should be revised. The Commission
19 approved the staff recommendations in those materials and instructed the staff to
20 prepare a draft final recommendation consistent with its decisions for
21 consideration at a future meeting.

22 STUDY H-858 — COMMERCIAL AND INDUSTRIAL SUBDIVISIONS

23 The Commission considered Memorandum 2013-7 and its First Supplement,
24 discussing public comment on the Commission’s study of commercial and
25 industrial subdivisions. The Commission decided to drop its efforts to
26 distinguish between “residential” and “nonresidential” common interest
27 developments and subdivisions. Instead, the staff will prepare a new draft final
28 recommendation that contains the other elements of the tentative
29 recommendation. The draft will include the proposed technical revision of
30 Business and Professions Code Section 11010(b)(17) set out on pages 22-23 of
31 Memorandum 2013-7.

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

3 The Commission considered Memorandum 2013-8, Memorandum 2013-9,
4 and the First Supplement to Memorandum 2013-9, relating to the Uniform Adult
5 Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”). The
6 Commission directed the staff to prepare a draft of a tentative recommendation,
7 which incorporates the following revisions of the discussion draft attached to
8 Memorandum 2013-9, as well as any necessary conforming changes:

9 **General Provisions (UAGPPJA Article 1)**

10 *Short Title (proposed Prob. Code § 1980; UAGPPJA § 101)*

11 Proposed Probate Code Section 1980 should be revised so that it reads along
12 the following lines:

13 1980. (a) By enacting this chapter, it is the Legislature’s intent to
14 enact a modified version of the Uniform Adult Guardianship and
15 Protective Proceedings Jurisdiction Act.

16 (b) This chapter may be cited as the “California Conservatorship
17 Jurisdiction Act.”

18 *Scope of Chapter (proposed Prob. Code § 1981)*

19 The draft should be revised so that the registration process (Article 4) applies
20 to a proceeding relating to an adult with a developmental disability. The
21 tentative recommendation should specifically solicit comment on the merits of
22 this approach, and on whether any other aspect of UAGPPJA should apply to an
23 adult with a developmental disability.

24 *Definitions (proposed Prob. Code § 1982; UAGPPJA § 102)*

25 The definition of “State” should refer to the “United States Virgin Islands,”
26 not the “Virgin Islands.” Aside from this revision, the definition should be left as
27 is.

28 *Communication and Cooperation Between Courts (proposed Prob. Code §§ 1984, 1985;*
29 *UAGPPJA §§ 104, 105)*

30 The tentative recommendation should specifically solicit comment on
31 whether to charge fees for the court services described in proposed Probate Code
32 Sections 1984 and 1985, and, if so, what fees to charge.

1 **Jurisdiction (UAGPPJA Article 2)**

2 *Jurisdiction (proposed Prob. Code § 1993; UAGPPJA § 203)*

3 The staff should seek information from ULC representatives regarding how a
4 court would “decline to exercise jurisdiction” under UAGPPJA and how another
5 court would determine whether this has occurred. It would also be helpful to
6 obtain information on this point from courts and practitioners in states that have
7 adopted UAGPPJA. Upon receiving such information, the Commission will
8 decide how to handle this point in the tentative recommendation.

9 *Special Jurisdiction (proposed Prob. Code § 1994; UAGPPJA § 204)*

10 Instead of referring to California’s process for appointment of a temporary
11 conservator, proposed Probate Code Section 1994 should follow the approach
12 used in UAGPPJA Sections 201(a)(1) and 204. The staff should check whether the
13 term “emergency” is defined elsewhere in the Probate Code, and, if so, make
14 adjustments as needed.

15 **Transfer (UAGPPJA Article 3)**

16 *Transfer of Conservatorship to Another State (proposed Prob. Code § 2001; UAGPPJA §*
17 *301)*

18 For purposes of a tentative recommendation, paragraphs (d)(2) and (e)(2) of
19 proposed Probate Code Section 2001 should be left as is. The tentative
20 recommendation should specifically solicit comment on whether to replace the
21 standard used in those paragraphs (“the court determines that the transfer
22 would not be contrary to the interests of the conservatee”) with the standard
23 used in paragraphs (d)(2) and (e)(2) of UAGPPJA Section 301 (“the objector has
24 not established that the transfer would be contrary to the interests of the
25 [conservatee]”).

26 *Accepting Conservatorship Transferred From Another State (proposed Prob. Code §*
27 *2002; UAGPPJA § 302)*

28 For purposes of a tentative recommendation, subdivision (d) of proposed
29 Probate Code Section 2002 should be left as is. The tentative recommendation
30 should specifically solicit comment on whether to replace the standard used in
31 that paragraph (“the court determines that transfer of the proceeding would be
32 contrary to the interests of the conservatee”) with the standard used in

1 paragraph (d)(2) of UAGPPJA Section 302 (“the objector establishes that transfer
2 of the proceeding would be contrary to the interests of the [conservatee]”).

3 **Miscellaneous Provisions (UAGPPJA Article 5)**

4 *Relationship to Electronic Signatures in Global and National Commerce Act (proposed*
5 *Prob. Code § 2112; UAGPPJA § 502)*

6 The staff should seek information from representatives of the Uniform Law
7 Commission regarding the meaning and import of UAGPPJA Section 502, and
8 conduct other research as necessary to advise the Commission on this matter.

9 *Operative Date (proposed Prob. Code § 2114; UAGPPJA § 505)*

10 California’s version of UAGPPJA should have a one-year deferred operative
11 date, with a carve-out for the section that directs the Judicial Council to develop
12 court rules and forms.

13 **Key Conforming Revisions**

14 *Investigation and Review of Transferred Conservatorship (proposed Prob. Code § 1851.1)*

15 The word “contested” should not be used in proposed Probate Code Section
16 1851.1(f), because that word has specific connotations in the probate context. The
17 staff should draft alternative language and present it to the Commission for
18 review.

19 *Petition for Appointment of Temporary Guardian or Temporary Conservator (proposed*
20 *amendment of Prob. Code § 2250)*

21 In light of the Commission’s decision on special jurisdiction (see above), the
22 proposed amendment of Probate Code Section 2250 is not necessary and should
23 be deleted.

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Secretary