

Memorandum 2012-50

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Matters to Discuss With ULC Representative**

During this study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”), the Law Revision Commission (“Commission”) has repeatedly expressed interest in having a representative of the Uniform Law Commission (“ULC”) come to California to explain how UAGPPJA is supposed to work. Commission staff have therefore arranged for Eric Fish (Senior Legislative Counsel and Legal Counsel for the ULC) to travel from the ULC’s Chicago office to attend the Commission’s upcoming meeting in San Diego, which is scheduled for December 13, 2012. Mr. Fish is the ULC Staff Liaison for UAGPPJA.

To take full advantage of this opportunity, the staff anticipates that the Commission will devote approximately half of the meeting to UAGPPJA. This will afford time for Mr. Fish to make a presentation and answer questions about the Act. We are also planning to prepare several memoranda on the topic, which the Commission could discuss and consider after hearing from Mr. Fish. **We strongly encourage all persons interested in UAGPPJA to attend the upcoming meeting and be prepared to participate in these discussions.**

In advance of the meeting, it would be helpful to provide Mr. Fish with a list of written questions relating to UAGPPJA, so that he can consider those questions beforehand and prepare to respond to them. Commissioners, stakeholders, and other persons will be able to raise further questions spontaneously at the meeting, but the more we can alert Mr. Fish to particular areas of interest ahead of time, the better he will be able to collect and organize any necessary information, confer with other ULC representatives, and consider the issues raised.

To that end, a list of the matters we have identified to date is attached as an Exhibit. **We strongly encourage Commission members, stakeholders, and other**

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.

interested persons to notify us of any other points they would like Mr. Fish to address. The staff will compile these suggestions and present them in a supplement to this memorandum, together with any further issues we identify ourselves. The supplement will also include a copy of UAGPPJA, so that everyone can readily refer to it when the Commission meets.

To be timely, please submit your suggestions on or before Friday, November 16. You may submit your suggestions by any of the following means:

- Email to <bhebert@clrc.ca.gov> and <bgaal@clrc.ca.gov>
- Fax to 650-494-1827 or 530-752-4704
- Mail addressed to: California Law Revision Commission
4000 Middlefield Road, Room D-2
Palo Alto, CA 94303

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

MATTERS TO DISCUSS WITH ULC REPRESENTATIVE (AS OF 10/30/12)

Note. States use varying terminology to refer to a proceeding in which a court appoints someone to assist an adult with personal care and/or financial matters because the adult cannot adequately handle those activities without such assistance. In California, this type of proceeding is referred to as a “conservatorship,” the person appointed to provide assistance is referred to as the “conservator,” and the adult who requires assistance is referred to as the “conservatee.” If the conservatee requires assistance with personal care, the proceeding is known as a “conservatorship of the person.” If the conservatee requires assistance with financial matters, the proceeding is known as a “conservatorship of the estate.” **For the sake of simplicity, we will use California terminology throughout this document.**

General Provisions (UAGPPJA Article 1)

- UAGPPJA Section 102(14) defines “State” to include “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.” Have any of those entities adopted UAGPPJA? Do any of those entities have a history of adopting uniform laws proposed by the ULC? What conservatorship laws do those jurisdictions have in place, if any? To what extent are those laws similar to California law? If you are not familiar with those laws, do you have any suggestions regarding how to find out more about them?

Transfer (UAGPPJA Article 3)

- UAGPPJA Section 302(d)(2) says:
 - (d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:
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 - (2) the guardian or conservator is *ineligible* for appointment in this state.(Emphasis added.) What does “ineligible” mean in this context? Is it only meant to encompass an *entity or professional* that would be ineligible to serve as a conservator in the state accepting a UAGPPJA transfer (e.g., a care facility that is not authorized to operate in the accepting state, or a professional fiduciary who has not met the licensing requirements of the accepting state)? Is it also meant to encompass an *individual* who would be ineligible to serve as a conservator in the state accepting a UAGPPJA transfer (e.g., a convicted felon, in some states)? If so, would it be possible to do a UAGPPJA transfer and replace the ineligible conservator with someone else? Or would that be impossible, because UAGPPJA Section 302(d)(2) would preclude issuance of an order provisionally granting the transfer petition?
- Is UAGPPJA meant to permit transfer of a conservatorship involving involuntary mental health care (i.e., a civil commitment)? If so, how would that work?

- Is UAGPPJA meant to permit transfer of a conservatorship in which the conservatee resides in a secured residential facility for dementia patients? If so, how would that work?
- Is UAGPPJA meant to permit transfer of a conservatorship in which a developmentally disabled adult receives services from a regional center? If so, how would that work?
- When does a transfer take effect (i.e., when can the conservator start operating in the new state, under that state's laws)? Does the transfer take effect when the accepting court issues an order provisionally granting a transfer petition? When the accepting court issues a final order accepting the transfer? At some other time?
- Are any statistics or other data on UAGPPJA transfers available yet?

Registration (UAGPPJA Article 4)

- Could a conservatorship be registered in a UAGPPJA state even if the state supervising the conservatorship has not adopted UAGPPJA?
- Is UAGPPJA's registration process intended to apply to medical decisionmaking? In other words, if an out-of-state conservatorship is registered in a UAGPPJA state, can the out-of-state conservator obtain medical care for the conservatee in the UAGPPJA state, consistent with the laws of that state?
- Is an out-of-state conservator required to register the conservatorship in *every* county in which the conservator wishes to act, or is it sufficient to register in one county and then provide proof of that registration when the conservator wishes to act in another county in the same state?

Other Matters

- Where can we find empirical data on how other states handle conservatorships?