

Second Supplement to Memorandum 2012-50

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Input From ULC Representative**

Eric Fish of the Uniform Law Commission has kindly provided the following materials in response to the questions raised in the First Supplement to Memorandum 2012-50:

- Exhibit p.*
- Responses to the Questions Posed in Supplement Memorandum of November 27, 2012 1
 - A Primer on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 4

We are grateful for the input and look forward to discussing these matters further with Mr. Fish at the upcoming meeting.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

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.

Responses to the Questions Posed in Supplement Memorandum of November 27, 2012

Eric Fish, Uniform Law Commission

What is the status of enactment and changes made in other states?

To date, 36 jurisdictions have enacted the UAGPPJA. The Uniform Law Commission seeks enactment of uniform act in all 50 states as well as 3 other jurisdictions, the District of Columbia, the U.S. Virgin Islands, and Puerto Rico. Of those last three jurisdictions, the District of Columbia and Puerto Rico have enacted the act. Although the enactment rate of uniform acts varies across subject matter, the UAGPPJA is moving towards national acceptance. This is in part due to the need for harmony on matters of jurisdiction. The UAGPPJA is based in part on the jurisdictional framework set out in the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), a uniform act that has been enacted in 52 jurisdictions, including California. Many of the concepts in the UAGPPJA are analogous to those found in the UCCJEA. In the field of probate law, about half of the jurisdictions that have enacted UAGPPJA previously enacted the Uniform Probate Code or parts thereof. Those jurisdictions that have not enacted the Uniform Probate Code have enacted stand-alone versions of the UAGPPJA or drafted the legislative vehicle in a manner that comports with their statutes on guardianships and other forms of surrogate decision making.

How would the UAGPPJA relate to California's existing statutes on emergency or temporary appointment of a guardian or conservator?

The provisions allowing for the appointment of a temporary conservator included in the UAGPPJA were drafted because several states do not have statutory guidelines to address such a need. As a result, the emergency and temporary appointment language was included to allay the concerns of the drafting committee. The definitions and provisions currently found in California are similar to the substance of the UAGPPAJA provisions, and there is no harm in referencing the existing section in a drafted version of the UAGPPJA.

What does "unjustifiable conduct" mean?

The term "unjustifiable conduct" was taken from the Uniform Child Custody and Jurisdiction Enforcement Act. California kept this term when it enacted the UCCJEA (Cal. Fam. Code § 3428). Although the drafting committee attempted to define unjustifiable conduct, case law throughout the country widely varied. As a result, the drafting committee concluded that it would be unwise to draft a definition and instead allow each state's case law to guide courts.

What constitutes and ineligible guardian or conservator?

The use of ineligible in Article 3 refers to the possibility that there will be a complex situation involving a transfer and possible need for replacement of a guardian. For example, in some states a guardian appointed in State A can act within State B. In such a case, the guardianship can be transferred. But in other states, there are restrictions on the extraterritorial use of power. In Missouri, the public administrator

cannot act if a guardianship were transferred out of state, such as to Illinois. As such, the guardian would have to be replaced in the new state at the time of transfer.

How would the act address transfers of those in civil commitment?

The UAGPPJA is intended to apply to traditional guardianship and conservator situations. In a great majority of states, civil commitments do not involve guardianship or conservatorship. If there are concerns with existing California practice on civil commitments, there should be a carve out in the definition that exempts these situations from the provision of the UAGPPJA.

How would UAGPPJA address transfer of those in treatment centers or facilities?

The UAGPPJA only sets up jurisdictional rules for transfers. Utilizing the procedures in UAGPPJA, courts would issue provisional orders that would facilitate transfer. The details on how to transfer would be addressed by the transferring facilities.

When does a transfer take effect?

The procedure set out in UAGPPJA is for the guardian or conservator to file two petitions—one with the court giving up the case and the other with the court to receive the case. The court giving up the case must grant provisional transfer if the adult is physically present, will be moving permanently, or has significant connections with the other state. After giving notice to the adult and interested parties, the court must hear any objections to the transfer and must be satisfied that the plans for care in the new state are reasonable and sufficient and that the new state will accept the transfer. The transfer takes effect when the second provisional petition is ordered.

Are there statistics on transfers?

There are no hard statistics on transfers because data on guardianship cases is hard to come by. However, anecdotal evidence from practitioners in the field, including from the Illinois Guardianship and Advocacy Commission, report that the transfer provision is working as designed.

How does the CA court investigator process fit in the UAGPPJA transfer provisions?

While not directly addressed in the UAGPPJA, in states where there is a similar court investigator, judges have stated the appointment of an investigator falls within the scope of their powers under existing state law and court procedures. As such, the court investigator process would continue under the UAGPPJA without any modification.

Can a conservatorship be registered even if state supervising the conservatorship has not adopted UAGPPJA?

Most states that have not adopted the UAGPPJA have similar registration procedures and the registration would proceed under existing state law. Those states with the Uniform Probate Code that have not adopted the UAGPPJA would have a uniform registration procedure.

Does UAGPPJA apply to medical decision making?

Yes.

Does a conservator need to register once or in every county?

State law controls whether or not the conservator would have to register in every county. In many states, a conservator or guardian must register in every county in order to handle real estate matters. Registration for personal property matters varies. Existing practice in California will dictate.

Is there any problem with Connecticut's approach on registration?

Connecticut's approach is acceptable due to local preferences and existing rules. If there are similar provisions of California law on notice, this approach is preferable.

**A PRIMER ON THE
UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION
ACT**

Priority of Jurisdiction

The uniform act creates a three-level priority for determining which state has jurisdiction to appoint a guardian or issue a protective order: (1) the home state; (2) a significant-connection state; (3) other state. Comments to Section 203 state that “the principal objective of this section is to eliminate the possibility of dual appointments or orders” except in emergency situations.

First, the “**home state**” is defined by Section 201(2) as the state in which the person under guardianship or conservatorship (“R”) was **physically present for at least six months immediately before the filing** of a petition for protective order or for the appointment of a guardian. Section 203 provides that a court has priority jurisdiction to appoint a guardian or issue a protective order if the state where the application is filed is the respondent’s home state.

The second level of priority involves a “**significant-connection state**” defined by Section 201 to mean “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.” To determine whether a “significant connection” exists, the court shall consider:

1. **location of R’s family**
2. **length of time R was present in state**
3. **location of R’s property; and**
4. **extent of R’s ties to state**

Under Section 203, a significant connection state has jurisdiction to appoint a guardian or issue a protective order if, on the date the petition is filed:

1. the R does not have a home state; or
2. the court of the R’s home state has declined to exercise jurisdiction having decided that the state where the petition is filed is a more appropriate forum; or
3. a petition for appointment or order is not pending in the R’s home state or another significant-connection state, and before the court makes an appointment or issues an order,
 - (a) a petition is not filed in the R’s home state;

(b) an objection is not filed by a person required to be notified of the proceeding by Section 208;
and

(c) the court determines that it is an appropriate forum under the nine factors set forth in Section 206.

The third level of priority is any “**other state**” provided that the home state and all significant-connection states have declined to exercise jurisdiction because the other state is the more appropriate forum and the jurisdiction in the other state is consistent with the constitution of the other state and the United States Section 203(3).

2. SPECIAL JURISDICTION – Section 204

The uniform act also addresses the very practical conflict that deciding the most appropriate forum may take a significant amount of time and many incapacitated adults need immediate protection. Therefore, Section 204(a) provides that even if a court does not have jurisdiction under Section 203, a court 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 R who is physically present in the state;
2. issue a protective order with respect to real or tangible personal property located in the state;
3. appoint a guardian for an incapacitated person for whom a provisional order to transfer the proceeding from another state has been issued under Section 301.

“Emergency” is defined by Section 201a(1) to mean “a circumstance that likely will result in substantial harm to 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 respondent’s behalf.”

However, Section 204(b) provides that “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 emergency appointment.

3. NOTICE

a. Additional Notice in Non-Home States

Under Section 208, if a petition for guardianship or protective order is filed in a state that is not the R’s home state, the petitioner must also give notice to those persons who would be entitled to notice under the laws of the R’s home state in the same manner that notice is required to be given in the state where the petition is filed.

The comments to Section 208 state that:

“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 208 helps ensure that the court obtains and considers evidence of granny snatching, other unjustifiable conduct, or elder abuse from persons in the respondent’s home state.

4. PROCEEDINGS IN MORE THAN ONE STATE

Except for petitions and orders in emergency situations, if petitions are filed in more than one state, Section 209 establishes these rules:

1. if the court has jurisdiction under Section 203, it may proceed with the case unless a court in another state acquires jurisdiction
2. before the appointment or issuance of the order;
3. if the court does not have jurisdiction under Section 203, the court shall stay the proceeding and communicate with the court in the other state, and 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 the court in this state is a more appropriate forum.

5. A COURT DECLINES JURISDICTION

a. More Appropriate Forum

Under Section 206, courts having jurisdiction under Section 203 may decline to exercise jurisdiction if it determines at any time that a court of another state is a more appropriate forum. The court may either dismiss or stay the proceeding and may impose any proper conditions including that a petition for the appointment of a guardian or issuance of protective order be filed promptly in another state.

In determining whether it is an appropriate forum, the court is given these **nine factors** to consider:

1. the R’s expressed preference
2. whether abuse, neglect or exploitation of respondent has occurred or is likely to occur and which state could best protect the R from such
3. length of time R was present in or a legal resident of this or another state
4. distance of R from the court in each state
5. financial circumstances of R’s estate
6. nature and location of evidence
7. the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence

8. familiarity of the court of each state with the facts and issues in the proceeding
9. the court's ability to monitor the conduct of the guardian or conservator

b. Unjustifiable Conduct

Section 207 provides that if the court determines that it acquired jurisdiction of a proposed ward because of unjustifiable conduct, the court may:

1. decline to exercise jurisdiction;
2. limit jurisdiction to fashion a protective remedy or stay the proceeding until a petition can be filed in a another state
3. continue to exercise jurisdiction after considering the extent to which the parties have acquiesced to the court's jurisdiction and whether this or another state is the more appropriate forum.

Transfer

Article Three sets out a two-state procedure for transferring a guardianship or conservatorship to another state, helping to reduce expenses and save time while protecting persons and their property from potential abuse. Even if there is no dispute among interested parties that a transfer of the person under guardianship to another location is appropriate, few states have streamlined procedures for sending or receiving such a case. Creation of a jurisdictional limbo can also occur if the person under guardianship may not be able to move to a new state until the guardianship is created in the new state, but the new state would not have jurisdiction until the person had moved and was present. To avoid that situation UAGPPJA grants the new state jurisdiction to issue provisional orders even though the new state would not ordinarily have jurisdiction.

The procedure set out in UAGPPJA is for the guardian or conservator to file two petitions—one with the court giving up the case and the other with the court to receive the case. The court giving up the case must grant provisional transfer if the adult is physically present, will be moving permanently, or has significant connections with the other state. After giving notice to the adult and interested parties, the court must hear any objections to the transfer and must be satisfied that the plans for care in the new state are reasonable and sufficient and that the new state will accept the transfer. If anyone objects to the transfer, the sending state would determine if the transfer would be contrary to the adult's interests. Once the receiving state accepts the guardianship or conservatorship, the sending state terminates its case. In the receiving state, notice and another opportunity to be heard on the petition to accept the transfer is available for those requesting it. After the receiving state accepts the case, it has exclusive and continuing jurisdiction. The new court is to give full faith and credit to the finding of incapacity and selection of the guardian or conservator of the sending state, but may hold a hearing to determine if the case needs to be modified to conform to local law.

Recognition and enforcement.

The UAGPPJA helps to facilitate enforcement of guardianship and protective orders in other states by authorizing a guardian or conservator to register orders in other states and requiring those states to give full faith and credit to those orders. Guardians and conservators frequently face the need to have their authority recognized in another state. It could be the need to sell real property in another jurisdiction or to obtain specialized medical care. If the authority granted in another state is not recognized the guardian or conservator may be faced with the expensive and time-consuming need to file an entirely new petition.

Following registration of the order in the other state, and after giving notice to the appointing court of the intent to register the order in the other state, the guardian or conservator may exercise all powers authorized by the appointing court. The fiduciary may not do anything prohibited by the other state and is subject to any conditions imposed upon nonresident parties, if the guardian or conservator is not a resident.

Under UAGPPJA, an order from a foreign country is not enforceable pursuant to the Article Four registration procedures, but an American state may otherwise apply the Act to a foreign proceeding as if the foreign country were an American state. A court may but is not required to recognize the foreign order. This means that the court may conclude that the court in the foreign country has jurisdiction because it is the adult's home state or significant-connection state and decline jurisdiction, or treat the foreign country as if it were a state in applying the Article Three transfer provisions.

Communication and cooperation.

One of the hallmarks of UAGPPJA is the emphasis on the importance of communications among courts hearing matters that involve the same adult. The Act permits and encourages communication between courts and parties of other states to resolve issues around which court has jurisdiction and to facilitate transfers to a different state. Because court cooperation is essential to the success of the Act, it also creates jurisdiction to respond to requests for assistance from courts in other states. For example, the court in one state may request a court in another state to hold an evidentiary hearing, order a person to produce evidence or give testimony, order an evaluation of the respondent or an investigation of a person involved in a proceeding, order the release of information, forward transcripts or recordings, or take testimony.