

First Supplement to Memorandum 2013-9

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: Comments on Discussion Draft

The Commission has received two communications relating to the discussion draft attached to Memorandum 2013-9. One communication concerns the operative date for California's version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"); the other communication pertains to a jurisdictional issue. Each communication is discussed below.

All statutory references in this memorandum are to the Probate Code.

Operative Date (proposed Section 2114)

The discussion draft solicits input on an appropriate operative date for California's version of UAGPPJA. See Memorandum 2013-9, Attachment p. 44.

Douglas Miller of the Administrative Office of the Courts ("AOC") has informed us that the Judicial Council "would need at least a full year to develop court rules and forms." Email from D. Miller to B. Gaal (2/4/13).

The staff is grateful for this input on how long it would take the Judicial Council to develop court rules and forms for UAGPPJA, as contemplated in proposed Section 2115 (see Memorandum 2013-9, Attachment pp. 44-45). In light of Mr. Miller's input, **we strongly urge the Commission to use a one-year deferred operative date in proposed Section 2114.**

Communicating an Intent to Decline Jurisdiction (Staff Note on proposed Section 1993)

As discussed in the Staff Note on proposed Section 1993, some members of the Executive Committee of the State Bar Trusts and Estate Section ("TEXCOM") are concerned about how a court would communicate an intent to "decline to exercise jurisdiction." See Memorandum 2013-9, Attachment p. 22. Peter Stern, a member of TEXCOM's working group on UAGPPJA, has provided further information on this point. See attached Exhibit.

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.

In particular, Mr. Stern reports (based on secondhand information) that a Nevada court recently “demanded a notification from California that the courts here would not exercise jurisdiction” in a conservatorship matter. *Id.* He regards it as “unreasonable for the courts in any state where someone brings a significant connection petition to demand that the home state search its county records to document that no petition is pending there.” *Id.* Instead of burdening *the court system*, he suggests that *the petitioner* should provide the necessary assurance regarding jurisdiction:

It would make more sense for the petitioner to allege in the significant connection state that there is no procedure under way in the home state, presumably in declaration form with an allegation of having searched the dockets of the county where the proposed conservatee had last resided, or where jurisdiction would have attached had the conservatorship been brought in the home state.

If it turns out that the declaration was false, that would constitute bad behavior that would be sufficient for the significant connection state to decline jurisdiction.

Id. Mr. Stern also suggests contacting the Nevada courts to find out how they are handling this aspect of UAGPPJA. *Id.*

The staff appreciates this clarification of the situation and possible ways of handling it. As Mr. Stern explains, the Commission might want to **provide guidance on how a court should determine whether another court has declined to exercise jurisdiction in a conservatorship matter.**

In addition, the Commission should also **carefully consider the details of how UAGPPJA’s process for court communication and cooperation (proposed Sections 1984 and 1985) is going to work.** How will the process be triggered? Will any court file be created? Will there be a filing fee? How much assistance and what types of assistance must a court provide in the name of comity?

The staff will seek input on these points from representatives of the Uniform Law Commission. **We also encourage others to share their thoughts on these matters, particularly court representatives.**

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

**EMAIL FROM PETER STERN, TEXCOM WORKING GROUP ON
UAGPPJA (2/1/13)**

Barbara, just a few days ago an email from a colleague in Contra Costa County came over a listserv about this issue, and Jayne Lee must have jumped on it immediately, whence this discussion embedded in the notes to [proposed Section] 1993.

The concern stems from an inquiry by Nevada courts. My recollection of the exchange is that the Alameda county person is now living in Nevada, where the conservatorship proceeding was under way, and according to the [California] attorney the Nevada court demanded a notification from California that the courts here would not exercise jurisdiction.

I'm not conversant with regulations adopted by Nevada courts to implement the Act there, but it seems unreasonable for the courts in any state where someone brings a significant connection petition to demand that the home state search its county records to document that no petition is pending there.

It would make more sense for the petitioner to allege in the significant connection state that there is no procedure under way in the home state, presumably in declaration form with an allegation of having searched the dockets of the county where the proposed conservatee had last resided, or where jurisdiction would have attached had the conservatorship been brought in the home state.

If it turns out that the declaration was false, that would constitute bad behavior that would be sufficient for the significant connection state to decline jurisdiction.

Perhaps someone should inquire of the Nevada courts what they're doing???