Study L-750 April 9, 2013

Second Supplement to Memorandum 2013-15

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Comments of Peter Stern)

Attached for the Commission's consideration is a comment submitted by Peter Stern, a member of TEXCOM's working group on UAGPPJA. Although Mr. Stern belongs to the working group, the recommendations in the attached comment are his individual views, not recommendations of the entire group. See Exhibit p. 1.

Section 203(2)(A) of UAGPPJA provides:

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

At pages 15-16 of Memorandum 2013-15, the staff pointed out that this is one of only two provisions in UAGPPJA that require a court to examine whether another court has "declined to exercise jurisdiction because this state is a more appropriate forum." The staff further explained:

> Notably, this UAGPPJA provision *does not* require a court in a significant-connection state to find that every other significant-connection state has "declined to exercise jurisdiction because this state is a more appropriate forum." Requiring such a finding would be unduly burdensome; depending on how many states are involved, it could be very costly for parties to have to initiate a conservatorship proceeding in each significant-connection state (plus the home state, if any) and obtain a court order declining to exercise jurisdiction from all but one of those states. Instead, it would be enough to initiate a conservatorship proceeding in the

> home state, obtain a court order from that state declining to exercise jurisdiction, and then seek jurisdiction in the significant-connection state that seems most appropriate based on the factors identified in proposed Section 1996(c) (corresponding to UAGPPJA § 206(c)). If that state is a poor choice, the court could decline to exercise jurisdiction and "may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate be filed promptly in another state." Proposed Section 1996(b) (corresponding to UAGPPJA § 206(b)).

Id. at 16 (emphasis in original).

Mr. Stern reports that the working group "has exchanged a number of emails on the problem of how to notify the court in a significant connection state that a home state court is declining to exercise jurisdiction." *Id.* He suggests that instead of the process described by the staff above, "there should be a more expedited method adopted for declining jurisdiction." Exhibit p. 1. In other words, he believes there should be "a method that would be more efficient (and economical) than to require a petition for establishment of conservatorship, with citation, notice of hearing, and all of the other procedures that we have to follow in filing for a conservatorship in California." *Id.*

Specifically, he proposes to "add to the California Conservatorship Jurisdiction Act a Section or subdivision that permits the filing of a petition whose purpose is simply to obtain an order of the Court declining jurisdiction over a possible conservatorship." *Id.* He fleshes out this concept by suggesting a number of details regarding the type of petition he proposes. See *id.* at 1-2.

Mr. Stern's idea is interesting and the Commission should discuss it at the upcoming meeting. The staff wonders, however, whether Mr. Stern's concern about saving costs is already adequately addressed by Section 203(2)(B) of UAGPPJA, which provides:

> 203. **JURISDICTION.** A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:
>
> ….
>
> (2) on the date the petition is filed, this state is a significant-connection state and:
>
> ….
>
> (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 ….

The corresponding provision in the staff draft tentative recommendation is proposed Probate Code Section 1993(d), which would provide:

(d) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if both of the following conditions are satisfied:

(1) On the date the petition is filed, this state is a significant-connection state, the proposed conservatee has a home state, and a conservatorship petition is not pending in a court of that state or another significant-connection state.

(2) Before the court makes the appointment, no conservatorship petition is filed in the proposed conservatee's home state, no objection to the court's jurisdiction is filed by a person required to be notified of the proceeding, and the court in this state concludes that it is an appropriate forum under the factors set forth in Section 1996.

….

Comment. Section 1993 is similar to Section 203 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to follow local drafting practices and conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

….

Subdivision (d), providing another basis for jurisdiction in a significant-connection state, corresponds to Section 203(2)(B) of UAGPPJA.

This provision would allow a significant-connection state to exercise jurisdiction in specified circumstances even when the home state has not "declined to exercise jurisdiction because this state is a more appropriate forum." **The staff encourages comment on whether it is sufficient to address the point raised by Mr. Stern, or whether other steps might be helpful, such as the new type of petition he suggests.**

The staff also encourages comment on how proposed Probate Code Section 1993(d) (corresponding to UAGPPJA § 203(2)(B)) would work in practice. Will it be feasible for a court to determine that

(1) "[A] conservatorship petition is not pending in [the home state] or another significant-connection state," as required by proposed Probate Code Section 1993(d)(1); and

(2) "[N]o conservatorship petition is filed in the proposed conservatee's home state," as required by proposed Probate Code Section 1993(d)(2)?

Each of these provisions would require proof of a negative, which could be challenging.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

EMAIL FROM PETER STERN
(4/8/13)

Re: UAGPPJA — Declining to Exercise Jurisdiction

Barbara:

The TEXCOM subcommittee on the Uniform Jurisdiction Act has exchanged a number of emails on the problem of how to notify the court in a significant connection state that a home state court is declining to exercise jurisdiction. The recommendations of this memo represent my own thoughts only on this subject.

According to the discussions you report in Memo 13-15, p. 15, with Mr. Orzeske of the ULC, the step of declining jurisdiction requires a court order issued by the home state court. Your memo suggests, at p. 16, that "it would be enough *to initiate a conservatorship . . . in the home state*, obtain a court order from that state declining to exercise jurisdiction, and then seek jurisdiction in the significant-connection state that seems most appropriate based on the factors identified in proposed Section 1996(c) . . . ." (emphasis added).

I would suggest that there should be a more expedited method adopted for declining jurisdiction. I have exchanged emails with my TEXCOM colleagues, and in particular Jayne Lee, who has the unique vantage point on TEXCOM of being an active court attorney, confronted with the real-world problems raised by the Act, about how to find a method that would be more efficient (and economical) than to require a petition for establishment of conservatorship, with citation, notice of hearing, and all of the other procedures that we have to follow in filing for a conservatorship in California.

I would suggest that we add to the California Conservatorship Jurisdiction Act a Section or subdivision that permits the filing of a petition whose purpose is simply to obtain an order of the Court declining jurisdiction over a possible conservatorship. The petitioner in this matter would, generally, be the person who is petitioner in a significant connection state for establishment there of a conservatorship/adult guardianship, and the new section might include an option for the petitioner to attach to the California petition a copy of his/her petition as filed in the significant connection state.

The substance of the Petition would be allegations corresponding to the nine factors in Section 1996, inviting the Court to make findings based on those factors that would support the court's order declining jurisdiction on the grounds that the significant connection state is a more appropriate forum. I'd suggest that the language in 1996 regarding dismissing or staying the proceeding be be augmented to contemplate the court's issuance of an order declining jurisdiction in the alternative to an order dismissing or staying the proceeding, to accommodate the new petition process I'm suggesting.

What would the appropriate notice be? Ms. Lee and I have exchanged contrary opinions about notice. I'd like to see an expedited procedure, perhaps even an ex parte procedure. I could foresee a circumstance where no notice would be necessary, when all parties who would be noticed in California (spouse/RDP, proposed conservatee, relatives through second degree) have already been noticed in the significant connection state

proceeding. Ms. Lee has argued forcefully that an ex parte procedure would not allow local relatives any notice of a California proceeding, which might provide the only opportunity local relatives would have to object to an out of state proceeding.

Our present conservatorship notice period is only fifteen days (Prob C Sec. 1822), and since it is likely that a petitioner using the expedited procedure I have suggested would be ready to file a petition asking the court to decline jurisdiction in California when he/she files in the significant connection state, a notice period of fifteen days on those persons who would normally be noticed under 1822 should not be unduly burdensome. I would add that if all parties entitled to notice waive notice, it should be possible to have the matter heard ex parte.

Respectfully submitted,

Peter S. Stern
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