Study L-750 July 24, 2013

Memorandum 2013-40

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: Adjustments Made in Other Jurisdictions

According to the Uniform Law Commission website, 37 jurisdictions have adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). This memorandum discusses modifications to UAGPPJA made by some of those jurisdictions, focusing on substantive changes that affect the operation of the Act. This memorandum is not intended to exhaustively address all modifications to UAGPPJA in the enacting jurisdictions.

For ease of reference, this memorandum discusses each provision of UAGPPJA sequentially. For each provision, staff briefly describes the nature of the provision for reference. Next, we provide a brief summary of any modifications to UAGPPJA made in the Commission's Tentative Recommendation on *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act* (June 2013) (hereafter, "Tentative Recommendation"), which is now being circulated for comment. The memorandum then identifies substantive changes that other jurisdictions made to the provision in their enactments of UAGPPJA. Finally, the memorandum gives the staff's perspective on the modifications made by other states, such as whether the Commission should explore the possibility of making similar modifications in California.

This memorandum provides such analysis for Article 1 (General Provisions) and Article 2 (Jurisdiction) of UAGPPJA. The staff will provide a similar analysis of the remainder of UAGPPJA when time permits.

For the most part, the changes to UAGPPJA made in other jurisdictions do not seem to require any adjustment to the Commission's tentative recommendation. They are described for informational purposes only. However, we have identified a few minor substantive or technical changes adopted by

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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. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

other states that the Commission may wish to consider further for California. Staff uses the hand signal (☞) at the Section headings to call the Commission's attention to the portions of this memorandum that discuss a change that may be of interest to the Commission for further consideration.

Because the Tentative Recommendation is currently being circulated for comment, **it would not be appropriate for the Commission to actually revise that proposal in any respect at this time.** Rather, the Commission should simply **provide guidance on which, if any ideas, it would like to examine more closely at a later date.**

(Puerto Rico is one of the jurisdictions that have enacted UAGPPJA. Puerto Rico's official legislative and statutory materials are only available in Spanish. Due to concerns about the accuracy of translation, Puerto Rico's enactment is not addressed in this memorandum).

UAGPPJA ARTICLE 1: GENERAL PROVISIONS

Article 1 of UAGPPJA consists of general provisions. We discuss each of the sections to which enacting states made substantive modifications separately below, with the exception of Section 102, which defines numerous terms for purposes of the Act. Due to time constraints, staff focuses on several key definitions in that section (e.g., "guardian"), rather than individually analyzing each definition and having to repeat the discussion of terminology changes for related terms (e.g., "guardianship proceeding"). Further, the memorandum discusses terminology modifications only in connection with the selected definitions; we do not otherwise point out where a state has replaced a UAGPPJA term with the state's defined term.

Staff notes that this memorandum departs from the standard practice of using California terminology throughout the discussion. Instead, in this memorandum, the terminology used is that of the state being discussed. Where using the state's terminology could result in confusion, this memorandum uses the UAGPPJA terminology (indicated, for example, by specifying "UAGPPJA 'conservator'").

As an initial matter, staff notes that states' changes to the definitions in Section 102 cover a wide range. Certain states made no substantive changes to any of the definitions. *See*, e.g., Colo. Rev. Stat. Ann. § 15-14.5-102. At least one state, Nevada, eliminated the definitions section in UAGPPJA altogether, but added two definitions for UAGPPJA terms elsewhere in its probate law and made modifications to expand the applicability of existing terminology to out-of-

state proceedings. Nev. Rev. Stat. Ann. §§ 159.1991 to 159.2029. Nevada amended existing definitions to encompass out-of-state proceedings and added the UAGPPJA definitions for "home state" and "state" to its general guardianship definitions. *See* 2009 Nev. Stat. 359 §§ 2, 3, 21, 22, 24.

Section 102(1): "Adult"

ULC Approach

Section 102(1) of UAGPPJA defines "adult" to mean "an individual who has attained 18 years of age."

Proposed California Approach

The Tentative Recommendation would use the UAGGPJA definition of "adult" without change. *See* Proposed Prob. Code § 1982. A Comment explains that "[t]he chapter does not apply to a minor, even if the minor is married or has had a marriage dissolved." Proposed Prob. Code § 1982 Comment.

Modifications Made By Other Jurisdictions

Most UAGPPJA jurisdictions use the UAGGPJA definition of "adult" without substantive change. However, Alabama defines an adult as someone who has reached the age of 19 or "has otherwise been deemed to be an adult under the laws of the State of Alabama or the laws of another state." Ala. Code § 26-2B-102(1). In Indiana, the definition of adult was modified to include "[a]n emancipated minor who has not attained eighteen (18) years of age." Ind. Code Ann. § 29-3.5-1-2. Tennessee incorporates by reference its general definitions for guardianships (Tenn. Code Ann. § 34-1-101), stating that those definitions apply "unless the context otherwise requires." Tenn. Code Ann. § 34-8-102. Although there is no definition of "adult," the definition for "minor" excludes emancipated minors (suggesting that an emancipated minor would be treated as an adult for the purposes of Tennessee's enactment of UAGPPJA). *See id*. § 34-1-101(12).

Staff Analysis

The definition of "adult" in UAGPPJA is central to dictating the scope of the Act. To the extent that this definition differs between states, that difference can create a class of persons who are within scope of the Act in one state and outside the scope of the Act in another. The above-described modifications to the definition of "adult" thus raise questions about the application of UAGPPJA's provisions to those people treated differently under different states' enactments.

Because the Commission has tentatively opted to use the UAGPPJA definition of "adult," it is already proposing to minimize the likelihood of such concerns surfacing in California. **The modifications made by Alabama, Indiana, and Tennessee do not appear to provide grounds for reconsidering the definition for "adult" used in the Tentative Recommendation.**

Sections 102(2) and (3): "Conservator" and "Guardian"

In UAGPPJA, the terms "conservator" and "guardian" effectively define the types of proceedings to which the streamlined registration and transfer processes in UAGPPJA apply. As such, "conservator" and "guardian" are key concepts. Many of the other defined terms in UAGPPJA rely on the definitions of either "conservator" or "guardian" (e.g., "incapacitated person," "protective order").

ULC Approach

In Section 102, UAGPPJA defines "conservator" and "guardian" as follows:

> (2) "Conservator" means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state's conservatorship or protective proceedings statute].
>
> (3) "Guardian" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state's guardianship statute].

Proposed California Approach

California uses different terminology from UAGPPJA for these concepts. In California, a "guardian" may only be assigned for a minor, while a "conservator" is assigned for an adult. Tentative Recommendation, p. 8. UAGPPJA's concept of "guardian" corresponds to a California "conservator of the person," while UAGPPJA's concept of "conservator" corresponds to a California "conservator of the estate." *Id.* at 8-10; *see also* Proposed Prob. Code § 1982(d), (e); UAGPPJA § 102(2), (3).

The Tentative Recommendation uses California terminology, replacing "guardian" and "conservator" with "conservator of the person" and "conservator of the estate," respectively, throughout the proposal, but retains the substance of the UAGPPJA definitions. *Compare* Proposed Prob. Code § 1982(d), (e) *with* UAGPPJA § 102(2), (3).

Modifications Made By Other Jurisdictions

In a number of states, the UAGPPJA terminology either differs from or is inconsistent with the state's general terminology for guardianship or conservatorship proceedings.

For instance, some states use the terms "guardian" and "conservator," but do not limit those terms to proceedings for adults as in UAGPPJA. *See*, e.g., Ala. Code §§ 26-2B-102 (2), (4); 26-2A-20(2), (7). In at least one other state, "guardian" is limited to minors, as it is in California. That state, Tennessee, defers to its general definitions for "guardian" and "conservator" "unless the context requires otherwise" and retains the use of both terms in the body of UAGPPJA. Tenn. Code Ann. §§ 34-8-102, 34-1-101 (4), (10); *see also*, e.g., *id*. § 34-8-105.

Another situation of differing terminology occurs when a state has different terminology than UAGPPJA for one or both of these key concepts. For instance, Illinois does not appear to use the term "conservator" outside of UAGPPJA, instead calling the analogous person a "guardian of the estate." *See*, e.g., 755 Ill. Comp. Stat. Ann. 8/102(2), 5/1-1 et seq. (no definition for "conservator" is provided in the Probate Act of 1975); *see also*, e.g., 210 Ill. Comp. Stat. Ann. 47/1-114. However, Illinois uses UAGPPJA's "guardian"/ "conservator" terminology in its enactment of UAGPPJA. *See* 755 Ill. Comp. Stat. Ann. 8/102(2), (3).

Jurisdictions made different decisions on how to reconcile the differing terminology issue. Due to time constraints, staff was not able to identify all states, like Illinois, that defer to UAGPPJA's terminology despite it being different from the state's general terminology. Staff is unsure how many states fall into this category. States that made changes to UAGPPJA's terminology or definitions were easier to identify and are discussed further below.

Generally, a state that chose to modify the UAGPPJA terms did so by either (1) modifying the definitions of "conservator" and "guardian" in its enactment or (2) replacing the UAGPPJA terms with the state's preferred terminology. For each of these approaches, the following provides an example of a state that takes that approach and identifies the other states that take the same approach.

1. **Retaining UAGPPJA terminology with different definitions**. Delaware follows this approach. Delaware changes the definitions of "conservator" and "guardian" to simply cite to the corresponding terms used in the Delaware code. *Compare* Del. Code Ann. tit. 12, § 39A-101(2), (5) (defining a UAGPPJA "conservator" as a Delaware 'guardian of the property' and UAGPPJA "guardian" as a Delaware 'guardian of the person')

with UAGPPJA § 102(2), (3). The following states, like Delaware, retain the UAGPPJA terminology, but modified the definitions of the terms: Indiana, New Jersey, Pennsylvania, and Tennessee.

2. **Replacing UAGPPJA terminology with the state's preferred terms**. Washington follows this approach. Washington chose to replace the UAGPPJA terms "conservator" and "guardian" with "guardian of the estate" and "guardian of the person," respectively, while retaining the substance of the UAGPPJA definitions. *Compare* Wash. Rev. Code Ann. § 11.90.020(2), (3) (Washington "guardian of the estate" is equivalent to UAGPPJA "conservator" and definition includes conservator appointed by the court in another state; Washington "guardian of the person" or "guardian" is equivalent to UAGPPJA "guardian") *with* UAGPPJA § 102(2), (3). The following states, like Washington, utilize different terminology than UAGPPJA: Connecticut, Nevada (Nevada omits UAGPPJA's definition section; Nev. Rev. Stat. Ann. § 159.017 defines "guardian" to include a "guardian of the person, of the estate, or of the person and estate"), and Ohio. Although Washington retained the substance of the UAGPPJA definitions, some of these states that changed terms also have changed the substance of the definitions. For example, Connecticut cites to existing definitions of "conservator of the estate" and "conservator of the person," rather than using UAGPPJA's language. Conn. Gen. Stat. Ann. § 45a-667a(2), (3).

Staff Analysis

The Tentative Recommendation uses California terminology rather than UAGPPJA terminology (i.e., the second approach identified above). Connecticut, Nevada, Ohio, and Washington took a similar approach. Staff's analysis indicates that the states enacting UAGPPJA have not used a consistent approach to resolve differences in a state's terminology and the UAGPPJA terminology. **Replacing UAGPPJA terminology with the state's preferred terms, as in the Tentative Recommendation, would not be unique but rather would be similar to the approach already used by several states.**

Section 102(14): "State"

ULC Approach

In Section 102, UAGPPJA defines "State" as meaning:

> a state of the United States, the District of Columbia, 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.

Proposed California Approach

In California, the Legislature, the Judicial Council, tribal representatives, and others are currently working on addressing the treatment of tribal court civil judgments in the state generally. Due in part to this ongoing work, the Tentative Recommendation specifically requests public comment on "whether to include a federally recognized Indian tribe in the definition of 'State' and, if not, what alternative treatment would be appropriate." Note on Proposed Prob. Code § 1982. Otherwise, the Tentative Recommendation does not modify the definition of "State." *Compare* Proposed Prob. Code § 1982(m) *with* UAGPPJA § 102(14).

Modifications Made By Other Jurisdictions

Some UAGPPJA states modify the treatment of tribes under the Act. In particular, both Alaska and Maine revise the definition of "state" to exclude federally recognized tribes. Alaska Stat. Ann. § 13.27.490(14); Me. Rev. Stat. Ann. tit. 18-A, § 5-512(n). The staff is uncertain whether either Alaska or Maine may have a more general provision in its laws that governs the treatment of tribes.

Ohio appears to have extended the definition of "state" to cover tribes that are "formally acknowledged by a state." Ohio Rev. Code Ann. § 2112.01(S).

Certain states, including New Mexico and Tennessee, omit the definition of "state" entirely, but may have different definitions of "state" in other portions of the code that apply. *See* N.M. Stat. Ann. § 45-5A-102; Tenn. Code Ann. § 34-1-101; *see also* N.M. Stat. Ann. § 45-1-201(48) (defining "state" for New Mexico version of Uniform Probate Code, does not explicitly list U.S. Virgin Islands and extends to tribes "formally acknowledged" by states); Tenn. Code. Ann. § 1-3-105(32) (general definition of "state" for Tenn. Code; does not include tribes).

Staff Analysis

It is clear that several other states have already grappled with and decided to deviate from UAGPPJA's treatment of Indian tribes. Staff suggests that the Commission take these approaches into account when it decides how tribes should be addressed in California's version of UAGPPJA.

Additional Definitions

Proposed California Approach

The Tentative Recommendation includes definitions for several terms not defined in UAGPPJA. *See*, e.g., Proposed Prob. Code § 1982(c), (f).

Modifications Made By Other Jurisdictions

In its review of other states' enactments of UAGPPJA, staff found that several other jurisdictions chose to define additional terms. *See*, e.g., Ala. Code § 26-2B-102(5) (defining "guardianship"); S.D. Codified Laws § 29A-5A-102(11) (defining "provisional order").

Staff Analysis

Staff simply notes that **several other states supplement the definitions provided in UAGPPJA, as the Tentative Recommendation proposes to do for California**.

☞ **Section 103: International Application of Act**

ULC Approach

UAGPPJA provides that "[a] court of this state may treat a foreign country as if it were a state for the purpose of applying this [article] and [Articles] 2, 3, and 5." UAGPPJA § 103.

Proposed California Approach

The Tentative Recommendation retains this language unchanged. *Compare* Proposed Prob. Code § 1983 *with* UAGPPJA § 103.

Modifications Made By Other Jurisdictions

Some states alter this section of UAGPPJA by (1) modifying the court's discretion under this provision or (2) changing the provisions of UAGPPJA eligible for international application in this section.

Alabama modifies this section to provide that a court may, *by written order*, treat a foreign country as a state under this provision. Ala. Code § 26-2B-103(a). Alabama adds a requirement that the transfer provisions be applicable to a foreign order "made … under factual circumstances in substantial conformity with the jurisdictional standards of this chapter." *Id.* § 26-2B-103(b). However, Alabama also provides that a court "need not apply this chapter if the guardianship or conservatorship law of [the] foreign country violates fundamental principles of human rights." *Id*. § 26-2B-103 (c).

Iowa *requires* courts to treat a foreign country as a state under this provision. Iowa Code Ann. § 633.702.

Maryland requires its courts to make a determination that the foreign country applies and follows substantive due process before taking certain actions,

including requesting that a foreign court issue an order or recognizing a guardianship or conservatorship order from a foreign country. Md. Code Ann., Est. & Trusts § 13.5-102(b).

Certain states, including Nevada and Ohio, extend the international application provision to cover the entire Act, including the Article 4 registration provisions. *See*, e.g., Nev. Rev. Stat. Ann. § 159.1993; Ohio Rev. Code Ann. § 2112.02.

Oklahoma omits this section entirely. *See* Okla. Stat. Ann. tit. 30, Art. III. It is unclear whether Oklahoma has general provisions of its laws that address the treatment of foreign court orders or jurisdictional issues between Oklahoma and foreign countries.

Staff Analysis

UAGPPJA Section 103 is permissive; it does not require a court to apply UAGPPJA's rules and procedures to any foreign jurisdiction. Consequently, it seems to pose little threat of being used to give streamlined UAGPPJA treatment where a country fails to accord due process or humane treatment in the types of proceedings covered by the Act.

Nonetheless, Maryland's approach, requiring a determination of due process before applying UAGPPJA to a foreign country, has some appeal. Staff notes that this approach could be challenging to implement and would require additional research to assess its feasibility. **Is the Commission interested in exploring this idea?** Comments on this point would be helpful.

Section 104: Communication Between Courts

ULC Approach

UAGPPJA permits a court to communicate with a court in another state and provides rules for that communication. UAGPPJA § 104.

Proposed California Approach

The Tentative Recommendation retains this language unchanged. *Compare* Proposed Prob. Code § 1984 *with* UAGPPJA § 104.

Modifications Made By Other Jurisdictions

Several states make changes to Section 104 to provide parties with notice or better access to the communication. Some of the most substantial changes to this section are described below.

Alabama expands this provision to more clearly describe the ability of parties to access the information that courts exchange in their communication. In particular, Alabama's law provides:

> …
> (b) If the parties are not allowed to participate in the communication, the court shall give all parties the opportunity to present facts and legal arguments before the court issues an order establishing jurisdiction.
> (c) Except as otherwise provided in subsection (d), the court shall make a record of any communication under this section and promptly inform the parties of the communication and grant them access to the record.
> …

Ala. Code § 26-2B-104. This amendment reflects Alabama's decision to adopt an "earlier draft provision of the Uniform Act to require the court to make a record of communications with other courts and to grant the parties access to that record. In this manner, a record is created to support the court's determination of jurisdiction." *Id*. § 26-2B-104, cmt. This language appears to provide more clarity on the limits of intra-court communication and ensures parties are notified of all intra-court communication.

Connecticut goes further and makes it mandatory for courts to allow parties to participate in intra-court communication. Conn. Gen. Stat. Ann. § 45a-667d(a). Connecticut also requires the court to make an audio recording of the communication and grant parties access to that audio recording. *Id.* § 45a-667d(b), (c). Connecticut explicitly states that "[n]othing in this section shall limit any party's right to present facts and legal arguments before a decision on jurisdiction is entered…." *Id.* § 45a-667d(e).

Hawaii explicitly allows *either* court to allow parties to participate in the communication. Haw. Rev. Stat. § 551G-4(a).

Staff Analysis

The staff's preliminary view is that the modifications made by other states to UAGPPJA Section 104 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 105: Cooperation Between Courts

ULC Approach

UAGPPJA authorizes a court to request that a court in another state take certain actions or provide certain information. UAGPPJA § 105(a). UAGPPJA also grants a court jurisdiction for the limited purpose of granting or making reasonable efforts to comply with another court's request. *Id.* § 105(b).

Proposed California Approach

The Tentative Recommendation retains the substance of this provision unchanged. *Compare* Proposed Prob. Code § 1985 *with* UAGPPJA § 105.

In the Tentative Recommendation, the Commission specifically requests comment on "whether a court should charge any fees for court services provided under subdivision (b) and, if so, what fees to charge." Note on Proposed Prob. Code § 1985.

Modifications Made By Other Jurisdictions

Regarding the fees issue on which the Tentative Recommendation seeks comment, Ohio allows its probate courts to require "an advance deposit for costs in an amount sufficient to obtain or provide the requested assistance." Ohio Rev. Code Ann. § 2112.04(B).

Some states also modify this section to either limit or expand their courts' authority to request assistance from other states or respond to the requests of other courts. For instance, Pennsylvania adds a catch-all provision authorizing its courts to request that the appropriate court of another state "[t]ake or refrain from taking any other action to facilitate the prompt and fair resolution of matters subject to this chapter." 20 Pa. Cons. Stat. Ann. § 5905(a)(8). Connecticut, on the other hand, only allows its courts to request other state court action in "involuntary representation" proceedings. Conn. Gen. Stat. Ann. § 45a-667e(a). Connecticut offers a streamlined process for "voluntary representation" proceedings, which do not require a finding of incapacity and allows the represented person to terminate the representation by giving the court 30 days' notice. *See id.* § 45a-646. An "involuntary representation" proceeding is more akin to a California "probate" conservatorship, requiring a finding of incapacity based on clear and convincing evidence. *See id.* § 45a-648 to 45a-650. Connecticut modifies a few other provisions of UAGPPJA to limit their applicability to only proceedings for "involuntary representation." *See infra* p. 13, 17.

Staff Analysis

In deciding how to handle the fee issue raised in the Tentative Recommendation, staff suggests that the Commission **consider the language adopted in Ohio as additional background information.**

The staff's preliminary view is that the other modifications made by other states to UAGPPJA Section 105 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 106: Taking Testimony in Another State

ULC Approach

UAGPPJA authorizes testimony and depositions to be taken in other states. UAGPPJA § 106. UAGPPJA also provides that documentary evidence transmitted in a manner that does not produce an original writing cannot be excluded from evidence based on the best evidence rule. *Id.* § 106(c). As subdivision (c) only applies in jurisdictions that have adopted the best evidence rule and California repealed that rule in 1998 on Commission recommendation, staff does not address the modifications to that subdivision in this memorandum.

Proposed California Approach

The Tentative Recommendation retains the substance of UAGPPJA Section 106 subdivisions (a) and (b) unchanged and excludes subdivision (c). *Compare* Proposed Prob. Code § 1986 *with* UAGPPJA § 106(a), (b).

Modifications Made By Other Jurisdictions

Several states adjust this section to provide either more or less authority to the courts to address evidence in other states.

Connecticut restricts its courts' ability to access evidence out of state under this provision, limiting it to "involuntary representation" cases. Conn. Gen. Stat. Ann. § 45a-667f(a).

New Jersey permits courts to authorize the deposition or testimony of a witness located in another state "by any means permitted by the Rules Governing the Courts of the State of New Jersey." N.J. Stat. Ann. § 3B:12B-8(a). In a similar fashion, New Jersey permits documentary evidence transmitted from

another state to be admitted into evidence consistent with the New Jersey Rules of Evidence. N.J. Stat. Ann. § 3B:12B-8(b).

Ohio grants its courts a more broad authority to gather out-of-state evidence, appending a provision allowing its courts to "adopt local rules of practice that promote the use of any device or procedure to facilitate the expeditious disposition of cases." Ohio Rev. Code Ann. § 2112.05(D).

Staff Analysis

The staff's preliminary view is that the modifications made by other states to UAGPPJA Section 106 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

UAGPPJA ARTICLE 2: JURISDICTION

Article 2 of UAGPPJA consists of provisions on jurisdiction. The memorandum discusses each of the sections to which enacting states made substantive modifications below. Section 201, however, contains both definitions and significant connection factors; these items are addressed separately below.

Section 201: Definitions

As an organizational matter, several states combine the definitions in this section with the definitions in UAGPPJA Section 102 to create a single definitions section for the act; some of these states omit certain definitions from this section. *See* Md. Code Ann., Est. & Trusts § 13.5-101; N.J. Stat. Ann. § 3B:12B-3 (omits the definition of "emergency"); Ohio Rev. Code Ann. § 2112.01.

UAGPPJA's definition of "emergency" is the subject of a number of different substantive changes in different states' enactments of UAGPPJA. The definitions of "home state" and "significant-connection state," where they are included in the enactment of UAGPPJA, generally appear substantively unchanged (at least one state, Nevada, omits the definition of significant-connection state).

ULC Approach

UAGPPJA defines "emergency" as

> a circumstance that likely will result in substantial harm to a 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 the respondent's behalf.

UAGPPJA § 201(a)(1).

Proposed California Approach

The Tentative Recommendation retains the definition of "emergency" without substantive change. *Compare* Proposed Prob. Code § 1991(a)(1) *with* UAGPPJA § 201(a)(1).

Modifications Made By Other Jurisdictions

Several UAGPPJA states change the standard of harm necessary to qualify as an emergency. Specifically, Connecticut and Vermont require a higher standard of harm than the uniform act ("substantial") to qualify as an emergency. Connecticut uses the phrase "immediate and irreparable," while Vermont uses "serious and irreparable." Conn. Gen. Stat. Ann. § 45a-667g(a)(1); Vt. Stat. Ann. tit. 14, § 3161.

Connecticut further requires that the emergency include a circumstance that would justify a temporary conservatorship. Conn. Gen. Stat. Ann. § 45a-667g(a)(1); *see also* Conn. Gen. Stat. § 45a-654(a). Oregon similarly cites to its own statutes on the appointment of a temporary fiduciary for the definition of emergency. Or. Rev. Stat. Ann. §§ 125.815(1)(a), 125.600.

UAGPPJA limits "emergency" to a situation that would affect a respondent's "health, safety, or welfare." UAGPPJA § 201(a)(1). A few states adjust the definition of "emergency" to indicate that a situation of financial or property harm can qualify as an emergency. Conn. Gen. Stat. Ann. § 45a-667g(a)(1); Idaho Code Ann. § 15-13-201(1)(a); Ohio Rev. Code Ann. § 2112.01(F). For instance, Connecticut revises the definition of emergency to specify that an emergency situation includes one of immediate and irreparable harm to "mental or physical health or financial or legal affairs." Conn. Gen. Stat. Ann. § 45a-667g(a)(1).

Maine deletes the portion of the "emergency" definition that appears to explain why appointment of a guardian is necessary (i.e., "because no other person has authority and is willing to act on the respondent's behalf."). Me. Rev. Stat. Ann. tit. 18-A, § 5-521.

Staff Analysis

The Commission has already considered the UAGPPJA provisions on "emergency" at length. *See*, e.g., Memorandum 2013-26, pp. 10-12. As the staff

has previously explained, those provisions, with the revisions tentatively approved by the Commission, would not change California's stiff standard for obtaining a temporary conservatorship. They would just add a new basis for jurisdiction to invoke the existing temporary conservatorship procedure, without eliminating or narrowing current usage of that procedure. *See id*.

With that in mind, the staff's preliminary view is that the modifications made by other states to the definition of "emergency" in UAGPPJA Section 201 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 201: Significant Connection Factors

ULC Approach

Subdivision (b) of Section 201 of UAGPPJA provides that, in determining whether a respondent has a significant connection with a particular state, the court shall consider the following list of factors:

> (1) the location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;
> (2) the length of time the respondent at any time was physically present in the state and the duration of any absence;
> (3) the location of the respondent's property; and
> (4) the extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Proposed California Approach

The Tentative Recommendation retains the substance of subdivision (b) of UAGPPJA Section 201 unchanged. *Compare* Proposed Prob. Code § 1991(b) *with* UAGPPJA § 201(b).

Modifications Made By Other Jurisdictions

Certain states move the significant connection factors into their own section or another section of UAGPPJA. *See*, e.g., Iowa Code Ann. §§ 633.706-633.707; Ohio Rev. Code Ann. § 2112.31(G).

Staff Analysis

The staff's preliminary view is that the organizational changes made by other states to the significant connection factors in UAGPPJA Section 201 do not appear necessary to ensure proper operation of UAGPPJA. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 202: Exclusive Basis

ULC Approach

UAGPPJA specifies that the Act provides the exclusive jurisdictional basis for a court to "appoint a guardian or issue a protective order for an adult." UAGPPJA § 202.

Proposed California Approach

The Tentative Recommendation revises the language to clarify that this provision only addresses the jurisdictional question of which state's courts have jurisdiction. *Compare* Proposed Prob. Code § 1992 *with* UAGPPJA § 202; *see also* Proposed Prob. Code § 1992, Comment.

Modifications Made By Other Jurisdictions

Certain states omit this section altogether. *See*, e.g., Del. Code Ann. tit. 12, ch. 39A; Nev. Rev. Stat. Ann. ch. 159. Other states limit the applicability of the jurisdiction provisions to certain types of proceedings. Specifically, Connecticut limits the applicability of the jurisdiction provision to "involuntary representation" proceedings. Conn. Gen. Stat. Ann. § 45a-667h.

Connecticut further revises this section to require that parties be granted the opportunity to present facts and legal arguments to the court before the court issues its decision on jurisdiction. *Id.*

Tennessee replaces this section with a section describing the intent of the Act in supplementing its Adult Protection Act and providing a basis for determining jurisdiction in cases involving the protection of an adult. Tenn. Code Ann. § 34-8-202. This section states that "nothing in this title shall supersede the provisions of [the Adult Protection Act]," but also provides that "the ultimate determination of the jurisdiction of this state or another state or foreign country to enter orders for

the adult's personal protection and financial welfare shall be determined under the jurisdictional provisions of this part." *Id.*

Vermont adds a provision in this section granting the probate division of its superior court "exclusive original jurisdiction to determine whether [Vermont] has jurisdiction pursuant to this subchapter." Vt. Stat. Ann. tit. 14, § 3162.

Staff Analysis

The staff's preliminary view is that the modifications made by other states to UAGPPJA Section 202 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 203: Jurisdiction

ULC Approach

Section 203 of UAGPPJA provides key rules for determining whether a court in a particular state has jurisdiction to appoint a guardian or issue a protective order.

Proposed California Approach

The Tentative Recommendation makes revisions to conform to local drafting practices and to emphasize that a court must *expressly* decline jurisdiction before it is deemed to have taken that step. *Compare* Proposed Prob. Code § 1993 *with* UAGPPJA § 203; *see also* Proposed Prob. Code § 1993, Comment.

Modifications Made By Other Jurisdictions

A few states revise this language to broaden or limit the grant of jurisdiction in this section. For instance, New Jersey broadens the jurisdiction granted under this section. In particular, New Jersey's enactment also applies UAGPPJA's jurisdictional test to a court's declaration that a person is incapacitated. N.J. Stat. Ann. § 3B:12B-9(a); *see also* N.J. Stat. Ann. §§ 3B:12B-13(a), 3B:12B-14(a). On the other hand, Alabama adds provisions that appear to limit this provision, to ensure that this section will not unduly affect the equity jurisdiction of the state's probate courts and that these jurisdictional provisions will not apply to proceedings under the state's Protection from Abuse Act or Adult Protective Services Act. Ala. Code § 26-2B-203(c), (d).

Nevada alters this section to grant jurisdiction to its courts to appoint a guardian when the respondent does not have a home state, without any additional requirements being met (i.e., Nevada does not need to be significant connection state, as UAGPPJA would require in a similar provision). *Compare* Nev. Rev. Stat. Ann. § 159.1998(1)(d) *with* UAGPPJA § 203(2)(A).

Nevada also has a different test for exercising jurisdiction when another state is the home state. In particular, under Nevada's enactment, the home state must decline to exercise jurisdiction because Nevada is a more appropriate forum and one of the following must be true: (1) the respondent has a significant connection with Nevada (see UAGPPJA Section 203(2)(A)) or (2) the respondent holds property in Nevada (no equivalent in UAGPPJA). Nev. Rev. Stat. Ann. § 159.1998(1)(b), (c). Nevada also excludes the provision of UAGPPJA that would provide for jurisdiction where the home state and all significant-connection states have declined jurisdiction finding another state (here, Nevada) is a more appropriate forum. In such a situation, UAGPPJA would authorize jurisdiction, where jurisdiction is consistent with the state and federal constitutions. Nevada has no equivalent provision that would grant jurisdiction in such a situation. *Compare* UAGPPJA § 203(3) *with* Nev. Rev. Stat. Ann. § 159.1998.

Staff Analysis

The staff's preliminary view is that the modifications made by other states to UAGPPJA Section 203 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 204: Special Jurisdiction

ULC Approach

Section 204 of UAGPPJA provides the test for whether a court has special jurisdiction to take certain specified actions, including appointing a guardian in an emergency, issuing a protective order for property in the state, and appointing a guardian where a provisional order to transfer from another state has issued.

Proposed California Approach

The Tentative Recommendation expands the provision on emergency appointments to specify the procedures for such an appointment. Proposed Prob. Code § 1994(a)(1). In addition, the Tentative Recommendation omits UAGPPJA's 90-day term on emergency appointments, instead citing to California's provisions on temporary conservatorship for the rules of governing termination. *See id.* Otherwise, the Tentative Recommendation appears substantively equivalent to UAGPPJA Section 204. *Compare* Proposed Prob. Code § 1994 *with* UAGPPJA § 204; *see also* Proposed Prob. Code § 1994, Comment.

Modifications Made By Other Jurisdictions

This section was subject to many modifications in the different enactments of UAGPPJA. A number of states alter the special jurisdiction provisions to extend or limit a state's ability to exercise special jurisdiction in specified circumstances.

In particular, several states alter the time limits for special jurisdiction. UAGPPJA Section 204(a)(1) specifically provides that the term of an emergency guardian appointment will not exceed 90 days. Alabama specifically grants the court the authority to "entertain successive petitions based upon its special jurisdiction under this section provided that the court receives no request for dismissal from the court of the respondent's home state and the court determines that the need for guardianship or conservatorship or both under this section continues." Ala. Code § 26-2B-204(c). Maine extends the time period to 6 months. Me. Rev. Stat. Ann. tit. 18-A, § 5-524(a)(1). South Dakota allows the emergency appointment to be extended for up to an additional 90 days for good cause. S.D. Codified Laws § 29A-5A-204. Connecticut and Maryland restrict the time period to 60 days. Conn. Gen. Stat. Ann. § 45a-667j(a)(1); Md. Code Ann., Est. & Trusts § 13.5-202(a)(1).

Certain states specify that special jurisdiction authority only extends to the appointment of *temporary* guardians or conservators *See*, e.g., Ind. Code Ann. § 29-3.5-2-4(a)(1); Conn. Gen. Stat. Ann. § 45a-667j. As the UAGPPJA provision already limits the term of the guardian appointed in an emergency, it is not clear whether the addition of "temporary" is simply a clarification or whether a temporary guardian or conservator has different substantive authority than a guardian or conservator under the law of those states.

Arkansas provides for special jurisdiction for maltreated adults when such an adult is present in Arkansas or the maltreatment occurred in the state. Ark. Code Ann. § 28-74-204(c).

Connecticut requires that any court exercising jurisdiction under this section make the specific findings required for the appointment of a temporary conservator in the state. Conn. Gen. Stat. Ann. §§ 45a-667j(a), 45a-654. Connecticut does not authorize special jurisdiction for protective orders to protect property in the state as permitted by UAGPPJA Section 204(a)(2). *See id.* § 45a-667j. Connecticut also provides that the court shall hold a hearing for proceedings under this section "upon written request of the respondent or person subject to the order in the proceeding." *Id*. § 45a-667j(c).

Maine only grants special jurisdiction to its courts when Maine is not either the respondent's home state or a significant-connection state. Me. Rev. Stat. Ann. tit. 18-A, § 5-524(a).

Nevada combines the special jurisdiction provisions with the general jurisdictional provisions in its enactment. *Compare* Nev. Rev. Stat. Ann. § 159.1998 *with* UAGPPJA §§ 203, 204. Nevada does not grant its courts special jurisdiction to issue a protective order with respondent to real or tangible personal property, as in UAGPPJA Section 204(a)(2). *See* Nev. Rev. Stat. Ann. § 159.1998. Where UAGPPJA allows for appointment of a guardian or conservator in a situation where there is a provisional order to transfer the proceeding from another state, Nevada grants special jurisdiction when needed "[t]o facilitate a transfer of the guardianship proceedings from another state…," without requiring a provisional order. *Id.* § 159.1998(2)(a).

New Jersey designates this section "Emergency Jurisdiction." N.J. Stat. Ann. § 3B:12B-11. New Jersey grants its courts the authority to issue a protective order (in addition to appointing a guardian) in an emergency. N.J. Stat. Ann. § 3B:12B-11(a)(1). Similarly, New Jersey grants its courts the authority to appoint a guardian (in addition to issuing a protective order) for real or tangible property located in the State. *Id.* § 3B:12B-11(a)(2). New Jersey specifies that the respondent must have an ownership interest in any real or personal property for which a guardian is appointed. *Id.*

Oregon allows the appointment of a guardian in an emergency situation as provided for in pre-existing provisions of the Oregon code pertaining to temporary fiduciary appointment. Or. Rev. Stat. Ann. §§ 125.822, 125.600.

Washington only allows a protective order for property to issue where a petition for appointment of a guardian or conservator is pending or has been approved in another state. Wash. Rev. Code Ann. § 11.90.230(1)(b).

Staff Analysis

As previously noted, the Commission has already considered the UAGPPJA definition of "emergency" at length, and tentatively approved an approach that seems suitable for California.

The staff's preliminary view is that the other states' modifications to UAGPPJA Section 204 do not strike the staff as preferable to the Commission's tentatively-approved approach. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 205: Exclusive and Continuing Jurisdiction

ULC Approach

UAGPPJA Section 205 provides:

> Except as otherwise provided in Section 204, a court that has appointed a guardian or issued a protective order consistent with this [act] has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms.

Proposed California Approach

The Tentative Recommendation retains the substance of this section largely unchanged. *Compare* Proposed Prob. Code § 1995 *with* UAGPPJA § 205.

Modifications Made By Other Jurisdictions

Generally, the substance of this section appears largely unchanged in the different enactments of UAGPPJA.

Staff Analysis

Because staff found no substantive modifications to this section in its review of the UAGPPJA enactments in other states, **we see no need for the Commission to change its proposed treatment of this provision.**

☞ Section 206: Appropriate Forum

ULC Approach

Section 206 of UAGPPJA provides a test for determining whether a court in a particular state is an appropriate forum, and specifies how courts should act where the court of another state is determined to be a more appropriate forum. This section specifies that a court must consider "all relevant factors" in determining whether it is an appropriate forum, including:

> (1) any expressed preference of the respondent;
> (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
> (3) the length of time the respondent was physically present in or was a legal resident of this or another state;
> (4) the distance of the respondent from the court in each state;
> (5) the financial circumstances of the respondent's estate;
> (6) the nature and location of the evidence;
> (7) the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;
> (8) the familiarity of the court of each state with the facts and issues in the proceeding; and
> (9) if an appointment were made, the court's ability to monitor the conduct of the guardian or conservator.

UAGPPJA § 206(c).

Proposed California Approach

The Tentative Recommendation revises this section to require that a court make a record when declining jurisdiction based on a finding of a more appropriate forum. *See* Proposed Prob. Code § 1996(b). The Tentative Recommendation would also emphasize that a court must consider the location of the proposed conservatee's family, friends, and other interested persons when determining whether it is an appropriate forum. *Compare* Proposed Prob. Code § 1996 *with* UAGPPJA § 206; *see also* Proposed Prob. Code § 1996, Comment.

Modifications Made By Other Jurisdictions

With respect to the proposed requirement of making a record, staff notes that Connecticut has a similar requirement, requiring a court to make written findings setting forth the basis of its determination of appropriate forum. Conn. Gen. Stat. Ann. § 45a-667*l*(d).

Several states revise the list of factors to be considered in an appropriate forum determination. Specifically, Idaho expands one of the listed factors, requiring courts to consider "[w]hether *there is a reason to suspect that* abuse, neglect, or exploitation of the respondent has occurred." Idaho Code Ann. § 15-13-206 (emphasis added). Ohio adds a catch-all provision requiring the court to consider "[a]ny other factors that the probate court considers relevant" in determining whether it is an appropriate forum. Ohio Rev. Code Ann. § 2112.24(c)(10). Connecticut modifies one of the factors the court must consider, specifying that the court must consider its ability to monitor the conduct of the conservator "within this state and outside of this state, if applicable." Conn. Gen. Stat. Ann. § 45a-667*l*(c)(10).

Connecticut also alters the procedural provisions of this section. In particular, Connecticut limits the stay of the proceeding to allow a petition to be filed in a more appropriate forum to 90 days. Conn. Gen. Stat. Ann. § 45a-667*l*(b).

Staff Analysis

Staff notes that **Connecticut's record requirement demonstrates that at least one other state found, as the Commission tentatively has, that memorializing a decision to decline jurisdiction appears to be beneficial.**

The factors for an appropriate forum determination listed in UAGPPJA Section 206 are not intended to be exhaustive. As noted above, Section 206 specifies that the court must consider "all relevant factors." However, by providing additional specificity on listed items, UAGPPJA could be read to implicitly limit the court's consideration on those particular issues. Idaho seems to have identified a situation where this may be problematic, a case of *suspected* abuse, neglect, or exploitation. Staff's initial assessment is that the language adopted by Idaho, requiring courts to consider whether *there is a reason to suspect* that such abuse has occurred, appears to grant a court more discretion to act where abuse is suspected but has not been conclusively proven. **Is the Commission interested in exploring a similar modification?** Comments on this point would be helpful.

Beyond these issues, the staff's preliminary view is that the other states' modifications to UAGPPJA Section 206 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

☞ Section 207: Jurisdiction Declined by Reason of Conduct

ULC Approach

UAGPPJA provides options for court action after determining that the court acquired jurisdiction because of unjustifiable conduct. UAGPPJA § 207. In particular, the court may decline to exercise jurisdiction, exercise jurisdiction for the limited purpose of protecting the respondent, or continue to exercise jurisdiction after considering listed factors. *Id.* at § 207(a). Finally, this section grants a court authority to assess expenses against a party who engaged in unjustifiable conduct. *Id.* at § 207(b).

Proposed California Approach

The Tentative Recommendation retains the substance of this section largely unchanged. *Compare* Proposed Prob. Code § 1997 *with* UAGPPJA § 207.

Modifications Made By Other Jurisdictions

For the most part, the UAGPPJA enactments appear to adopt this section without significant substantive change. There are a few notable exceptions.

First, Connecticut limits the court's authority to dismiss the case under subdivision (a) to situations in which the court "has not entered an order in the case." Conn. Gen. Stat. Ann. § 45a-667m(a)(1). Where a court has issued orders in the case, Connecticut authorizes the court to rescind any order issued in the case and dismiss the case, but grants the court limited jurisdiction in this situation to fashion a remedy to "avoid immediate and irreparable harm to the mental or physical health or financial or legal affairs of the [respondent]." *Id.* § 45a-667m(a)(2). Connecticut does not permit courts to continue to exercise jurisdiction over such a case. *Compare id.* § 45a-667m *with* UAGPPJA § 207.

Connecticut also adds medical examination expenses to list of expenses that may be assessed against a party that invoked the court's jurisdiction through unjustifiable conduct. Conn. Gen. Stat. Ann. § 45a-667m(b).

Second, Nevada omits the sentence limiting the authority of courts to assess fees, costs, or expenses of any kind against the state or a governmental subdivision, agency, or instrumentality. *Compare* Nev. Rev. Stat. Ann. § 159.202(2) *with* UAGPPJA § 207(b).

Finally, Ohio adds a definition of "unjustifiable conduct" to this section. Ohio's definition provides that "'unjustifiable conduct' includes, but is not limited to, conduct by a person that attempts to create jurisdiction in this state by

removing the adult from the adult's home state, secreting the adult, retaining the adult, or restraining or otherwise preventing the adult from returning to the adult's home state in order to prevent or deprive a court of the adult's home state from taking jurisdiction." Ohio Rev. Code Ann. § 2112.25(C).

Staff Analysis

UAGPPJA Section 207 grants the court authority to assess against a party who engaged in unjustifiable conduct "necessary and reasonable expenses, including …" several specific types of expenses. While it does not appear that Section 207 is intended to be an exhaustive list, the explicit grant of authority to assess certain types of expenses could raise questions about the treatment of expenses not appearing on the list. Thus, Connecticut's decision to add "medical examination expenses" to the list may be useful. **Is the Commission interested in exploring this idea further?** Comments on this point would be helpful.

Otherwise, the staff's preliminary view is that the modifications made by other states to UAGPPJA Section 207 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

☞ Section 208: Notice of Proceeding

ULC Approach

Where a proceeding under UAGPPJA for appointment of a guardian or conservator is brought in a state that is not the respondent's home state, Section 208 specifies that notice of the proceeding must be provided to everyone who would be entitled to notice if the proceeding were brought in respondent's home state. Such notice must be given in the same manner as notice is required in the state where the proceeding is brought. UAGPPJA § 208.

Proposed California Approach

The Tentative Recommendation revises this section to reflect that certain states require notice of a hearing on a petition, as opposed to notice of the petition itself. *Compare* Proposed Prob. Code § 1998 *with* UAGPPJA § 208; *see also* Proposed Prob. Code § 1998, Comment.

Modifications Made By Other Jurisdictions

Several states revise the notice provisions. Many of these changes appear to be deferring to other notice requirements in the state's laws. For instance, Arkansas exempts certain proceedings from the notice requirements of this section, specifically those under the Adult Custody Maltreatment Act. Ark. Code Ann. § 28-74-208. Nevada omits this section, but modifies its general notice requirements to require a petitioner to give notice to "[t]hose persons entitled to notice if a proceeding were brought in the [respondent's] home state." *Compare* Nev. Rev. Stat. Ann. § 159.034 *with* UAGPPJA § 208. New Jersey appears not to require that persons in the respondent's home state receive notice, instead requiring notice only to the persons "who would be entitled to notice if the regular procedures for appointment of a guardian or a conservator under the Rules Governing the Courts of the State of New Jersey were applicable." N.J. Stat. Ann. § 3B:12B-15. Rule 4.86, regarding guardianship and conservatorship, does not address out-of-state issues. Rules Governing the Courts of the State of New Jersey, Rule 4.86, *available at* <www.judiciary.state.nj.us/rules>. Also, it appears that New Jersey only requires notice of hearings for guardianship or conservatorship under its Rules. *Id.*

Ohio made what appears to be a technical change, identifying the applicant as the person who is responsible for giving notice to those persons who would be entitled to notice of the application if a proceeding were brought in the respondent's home state. Ohio Rev. Code Ann. § 2112.26.

Staff Analysis

In the staff's opinion, Ohio's technical clarification, specifying who is required to give notice, provides helpful clarification. UAGPPJA does not specify whose obligation it is to provide notice. **Staff suggests that the Commission explore the possibility of making a similar clarification in California.**

Otherwise, the staff's preliminary view is that the modifications made by Arkansas, Nevada, and New Jersey to UAGPPJA Section 207 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Section 209: Proceedings in More than One State

ULC Approach

UAGPPJA specifies how a court should handle a situation in which petitions for guardianship or conservatorship are filed in multiple states. UAGPPJA § 209.

Proposed California Approach

The Tentative Recommendation retains the substance of this section largely unchanged. *Compare* Proposed Prob. Code § 1999 *with* UAGPPJA § 209.

Modifications Made By Other Jurisdictions

Generally, the modifications to this section in the enactments of UAGPPJA appear to be relatively minor. There are, however, two modifications to note.

To avoid triggering the required dismissal of a petition, a court in Connecticut lacking jurisdiction requires a court in another state with jurisdiction to determine both that the court in Connecticut is a more appropriate forum and that jurisdiction is consistent with Connecticut statutes and the constitutions of Connecticut and the United States. Conn. Gen. Stat. Ann. § 45a-667*o*(2).

Where a court in Maryland does not have jurisdiction under UAGPPJA's provisions, Maryland has crafted a position of general deference to the courts in other states. Specifically, Maryland does not require that the court in the other state have jurisdiction. Md. Code Ann., Est. & Trusts § 13.5-207(2). Maryland also makes dismissal of the case in Maryland mandatory unless the court in the other state determines that the Maryland court is a more appropriate forum. *Id*.

Staff Analysis

The staff's preliminary view is that the modifications made by Connecticut and Maryland to UAGPPJA Section 209 do not appear necessary to ensure proper operation of UAGPPJA, nor do they appear sufficiently helpful to warrant a deviation from uniformity. Absent further information about the purpose or effect of those revisions, **staff does not recommend that the Commission explore the possibility of making similar deviations in California.**

Other Additions

Modifications Made By Other Jurisdictions

Alabama adds a lengthy section specifying what information must be included in the pleading first filed by each party (or in an attached affidavit). Ala. Code § 26-2B-210. Under this section, the party must give information about the following issues:

- Respondent's present address or whereabouts and the places and addresses where the respondent has lived during the last five years;
- Whether the party has participated, as a party or witness or in any other capacity, in any other proceeding concerning the guardianship or conservatorship of the respondent and, if so, the identity of the court, the case number, and the date of the guardianship or conservatorship determination, if any;
- Whether the party knows of any proceeding that could affect the current proceeding, including, but not limited to, proceedings for the establishment, modification, termination, or enforcement of a protective order, and, if so, the identity of the court, the case number, and the nature of the proceeding;
- Whether the party knows the names and addresses of any person not a party to the proceeding who has physical custody of the respondent, and, if so, the names and addresses of any such person; and
- Whether the party knows the names and addresses of any person not a party to the proceeding who holds an appointment or alternate appointment as legal agent of the respondent and, if so, the names and addresses of any such person

Ala. Code § 26-2B-210. In a Comment, Alabama notes that this provision was added to "ensure that accurate and complete information concerning pending proceedings is submitted to the court in a timely manner. It also ensures that sufficient facts are presented to allow the court to make an initial determination concerning its jurisdiction under the Act." *Id*. § 26-2B-210, Comment.

Staff Analysis

The staff's preliminary view is that Alabama's additional provision in its version of UAGPPJA Article 2 does not appear necessary to ensure proper operation of UAGPPJA, nor does it appear sufficiently helpful to warrant a deviation from uniformity. Staff believes that it might be more appropriate to put

this type of requirement in a court rule than in a statute. **Comments on this matter would be helpful.**

CONCLUSION

Through staff's review of the UAGPPJA enactments described above, staff has not found any modifications to UAGPPJA that appear to be necessary for the act to function properly, nor has the staff found any significant substantive changes that appear sufficiently helpful to warrant the Commission considering a deviation from the uniform language as it develops its recommendation.

However, staff has identified several smaller technical or minor substantive modifications that the Commission may want to consider for California. Staff suggests that modifying Section 208 of UAGPPJA to specify *who* is required to provide notice of a proceeding appears to be a helpful clarification meriting further consideration. In addition, this memorandum identifies several items and requests that the Commission provide input on whether these items warrant further consideration. For the items that the Commission wishes to consider further, staff proposes to bring these items back before the Commission when public comment on the Tentative Recommendation is considered.

Is the Commission comfortable with this approach? Are there any other items discussed herein that the Commission would like staff to bring back to their attention at a later date for a more thorough examination?

A future memorandum will address the modifications that enacting states have made to Articles 3, 4, and 5 of UAGPPJA.

Respectfully submitted,

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