Study L-750 December 11, 2013

First Supplement to Memorandum 2013-55

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: Tribal Issues

The Commission has received a letter from the California Judicial Council's Probate and Mental Health Advisory Committee (P-MHAC), commenting on the content of Memorandum 2013-15.[1] That letter is attached. Its main points are discussed below.

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

OVERVIEW

In its letter, P-MHAC makes 6 main points:

(1) P-MHAC generally supports treating tribes as states for the purposes of UAGPPJA.[2]

(2) P-MHAC does not support treating tribes in other states in the same way as California tribes, for the purposes of jurisdiction.[3]

(3) While P-MHAC prefers its own recommendation regarding the allocation of state and tribal court jurisdiction (described as "territorial exclusivity" in Memorandum 2013-55), it "would support permissive deference to tribal courts…."[4]

(4) P-MHAC supports the staff recommendations relating to communication between state and tribal courts.[5]

(5) P-MHAC reiterates its support for allowing partial transfers between state and tribal courts.[6]

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

2. See Exhibit p. 2.
3. See Exhibit pp. 3, 5-7.
4. See Exhibit p. 5.
5. *Id.*
6. See Exhibit pp. 6-7.

(6) P-MHAC supports the staff recommendations relating to registration of an order of a California tribe, but does not agree that the same approach should be used for tribes in other states.[7]

Those points are discussed further below.

In addition, P-MHAC poses two general questions for the Commission to consider:

1. What benefits, if any, does the Commission believe a California Indian tribe will derive from UAGPPJA if it (the tribe) does not enact some form of that law?
2. What does the Commission believe will happen if a California tribe enacts UAGPPJA or some version of it, but the act itself does not contain, in some form, the provisions of Article VI proposed jointly by P-MHAC and the Judicial Council's California Tribal Court and State Court Forum ("Forum")?[8]

TREATING TRIBES AS "STATES"

P-MHAC generally agrees that federally-recognized tribes should be recognized as states for the purposes of the proposed law.[9]

However, P-MHAC seems to suggest that this treatment needs to be limited to tribes with a court system "that complies with" the requirements of the Indian Civil Rights Act (ICRA), in order to ensure due process.[10]

The ICRA limitation proposed by P-MHAC was not included in the language drafted by the staff, because compliance with ICRA is mandatory. Every tribe that exercises powers of self-government is subject to the requirements of ICRA.[11] No tribal court of a federally recognized tribe may "deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law…."[12]

If the staff is misconstruing P-MHAC's comment or is ignorant of situations in which tribal courts are not bound by ICRA, additional comment would be appreciated. **Otherwise, the staff recommends against conditioning the treatment of tribes as states on an express requirement that they "comply with" ICRA.[13]**

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7. See Exhibit p. 7.
8. See Exhibit pp. 1-2.
9. See Exhibit p. 2.
10. See Exhibit p. 2; 25 U.S.C. § 1301 *et seq*.
11. See 25 U.S.C. § 1302. See also 25 U.S.C. § 1301 (definitions).
12. 25 U.S.C. § 1302(a)(8).
13. Memorandum 2013-55, Attachment p. 1.

TRIBES IN OTHER STATES

In its summary of existing jurisdictional principles, Memorandum 2013-55 cites the *Cohen Handbook of Federal Indian Law* for the proposition that there are circumstances in which a tribe may exercise jurisdiction over one of its members who is not present on tribal land, solely as a consequence of membership.[14] Cohen asserts that the "more closely a matter is related to core tribal interests, the stronger the case is for recognition of jurisdiction based on membership in the tribe."[15] *Cohen* specifically cites "domestic relations and probate matters" as examples of "core tribal interest."[16] P-MHAC asserts that *Cohen's* reference to "probate matters" is limited to the administration of a decedent's estate, not conservatorship.[17] Nonetheless, conservatorship touches on the protection of vulnerable tribe members, and would seem to be the sort of domestic relations issue that would be of core tribal concern.

Given that possible non-territorial basis for tribal jurisdiction, Memorandum 2013-55 discusses the possibility that states and tribes can have concurrent conservatorship jurisdiction over a tribe member who resides outside of tribal land. In other words, a California tribe near the Oregon border would seem to have a good argument for asserting conservatorship jurisdiction over a member residing in Sacramento. If this is correct, the staff sees no basis for limiting that principle to in-state tribes. A tribe in Arizona could make the same argument for asserting jurisdiction over a tribe member living in San Diego.

For that reason, Memorandum 2013-55 discusses whether the proposed rules that provide for enhanced communication with, and some measure of deference to, tribal courts should also be applied to tribes located outside of California.[18] On that point, the staff was slightly inclined to treat out-of-state tribes in the same way as California tribes. (The same basic issue came up in the discussion of registration of tribal court conservatorship orders. That point is discussed later in this supplement.)

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14. Memorandum 2013-55, pp. 5-6.
15. *Cohen Handbook* § 4.01[2][e] at 220.
16. *Id.*
17. See Exhibit p. 3.
18. Memorandum 2013-55, p. 25.

P-MHAC agrees that tribal courts have *some* jurisdiction over members living outside of tribal land, while emphasizing that the scope of that jurisdiction is not clear.[19] But the group disagrees with treating out-of-state tribes the same as California tribes with regard to jurisdictional issues.[20] They are concerned that long-distance conservatorships ("extreme extraterritoriality") could cause due process problems[21] and practical problems relating to an out-of-state tribal court's ability to effectively supervise a conservatee living in California.[22] The staff expressed similar reservations about an out-of-state court's practical ability to effectively supervise a conservatorship over a great distance.[23]

P-MHAC also expresses concern that out-of-state tribes not be given any greater jurisdictional rights than other states:

> If tribes are to be treated as states under UAGPPJA, tribal courts located in other states should acquire no greater right under that law to proceed with conservatorships of persons present in this state than courts of other states would have under that law.[24]

However, it is not certain that tribes and states are similarly situated in this respect. If it is correct that tribes have extraterritorial jurisdiction over their members with regard to core tribal concerns, then that possibility may justify different treatment.

Moreover, if the Commission decides to recommend some degree of deference to tribal courts (especially if the recommendation is to extend presumptive or permissive deference), **the staff sees no real disadvantage to extending the same deference to tribes in other states.** So long as deference is not mandatory, what is the harm in allowing a California court to consider whether an out-of-state tribal court would be the most appropriate forum? Such a rule would not be significantly different from the UAGPPJA provision that allows a home state court to decline to exercise its jurisdiction when it determines that another state is the more appropriate forum.[25] The proposed factors for determining whether to defer to a tribal court, which are drawn from UAGPPJA, include the distance of the conservatee from the court of each state, the location of family friends and others entitled to notice, the location of

19. See Exhibit p. 3.
20. See Exhibit p. 5.
21. See Exhibit p. 2.
22. See Exhibit p. 3.
23. Memorandum 2013-55, p. 28.
24. See Exhibit p. 5.
25. See UAGPPJA § 206; proposed Section 1996.

property, the nature and location of evidence, and the court's ability to supervise the conservatorship. Those factors would seem to provide a reasonable basis for a court to decide whether an out-of-state tribe is the better forum.

However, if the Commission is persuaded that the jurisdictional provisions should treat California tribes differently from tribes in other states, such a change could be implemented fairly simply. The jurisdictional provisions could be revised to replace the term "California Indian tribe" throughout. The definition of the terms "California Indian tribe" and "tribal land" proposed by the staff in connection with the territorial exclusivity approach would need to be added.[26] Thus:

> "California Indian Tribe" means a federally recognized Indian tribe with tribal land located in California that has a court system that exercises jurisdiction over proceedings that are substantially equivalent to conservatorship proceedings.
>
> A "tribe's land" and "tribal land" means land that is, with respect to a specific Indian tribe and the members of that tribe, "Indian country" as defined in 18 U.S.C. § 1151.

Note, however, that this approach would apply the general jurisdictional rules of the proposed law to out-of-state tribes as "states." Under those provisions, a California court could consider and determine whether to decline jurisdiction on the grounds that the out-of-state tribal court is the more appropriate forum.[27] That would largely reiterate the substance of the proposed permissive deference rule (in a less carefully tailored way).

Does the Commission wish to make such a change?

JURISDICTION

In Memorandum 2013-55, the staff listed a number of concerns about the territorial exclusivity approach to jurisdiction that had been proposed by P-MHAC. The concerns included the possibility that territorial exclusivity could add procedural complications and, in some circumstances, limit a petitioner's choice of forum.[28]

Those problems could arise if a petitioner wishes to file a petition in a forum that is not the proposed conservatee's "home state" (e.g., filing in state court if the proposed conservatee resides on tribal land). The staff pointed out that this

26. Memorandum 2013-55, Attachment p. 2.
27. Proposed Section 1996.
28. See Exhibit pp. 14-15.

would generally require petitioning the court of the home state to decline jurisdiction. That would entail an additional procedural step and there is no guarantee that the home state court would grant the petition.

As Memorandum 2013-55 points out,[29] an alternative would be to go ahead and file the petition in the "significant-connection state," without first securing the home state court's approval. But doing so would be risky. The significant-connection state court could lose jurisdiction, at any point prior to the appointment of a conservator, if any person entitled to notice files an objection or if a petition is filed in the home state's court.[30] That too could impose procedural complications (the entire proceeding in the significant-connection state would be without effect) and could bar filing in the forum of choice.

P-MHAC does not seem concerned about the risks involved in proceeding without first petitioning the home state court to decline jurisdiction:

> The most likely objector would be the proposed conservatee or a close friend or family member acting on his or her behalf. Such an objection would most commonly occur if the objecting party is also opposed to a conservatorship or to the particular person proposed as conservator. This means that the jurisdictional objection would occur most commonly in connection with additional litigation on substantive grounds, which in turn means that any additional burden imposed by the jurisdictional dispute would usually be incremental only. The provisions of UAGPPJA and Article VI for consultation between courts would tend to make this portion of the dispute even less burdensome than otherwise might be the case.[31]

Regardless of the *reason* for an objection, the filing of an objection would still mean abandoning the proceeding in the significant-connection state. That could result in a significant increase in cost (especially if the proceeding had advanced significantly) and the denial of the choice of the significant-connection state as a forum. The staff is still concerned about those possible effects of the territorial exclusivity approach.

COMMUNICATION

P-MHAC supports the staff recommendations relating to improved communication between state and tribal courts.[32]

29. Memorandum 2013-55, pp. 15, 16,
30. Proposed Section 1993(d).
31. See Exhibit p. 4.
32. See Exhibit p. 5.

P-MHAC suggests one further step to improve communication: require that notices be given to a proposed conservatee's tribe, if that tribe is located outside of California. That is an interesting idea. However, it might make sense to broaden the proposed requirement, to apply to federally recognized tribes (rather than just out-of-state tribes). That could be implemented by revising Section 1822 as follows:

> 1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in this section. The notice shall be accompanied by a copy of the petition. The court may not shorten the time for giving the notice of hearing under this section
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> (b) Notice shall be mailed to the following persons:
>
> (1) The spouse, if any, or registered domestic partner, if any, of the proposed conservatee at the address stated in the petition.
>
> (2) The relatives named in the petition at their addresses stated in the petition.
>
> (c) If notice is required by Section 1461 to be given to the Director of State Hospitals or the Director of Developmental Services, notice shall be mailed as so required.
>
> (d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the Office of the Veterans Administration referred to in Section 1461.5.
>
> (e) If the proposed conservatee is a person with developmental disabilities, at least 30 days before the day of the hearing on the petition, the petitioner shall mail a notice of the hearing and a copy of the petition to the regional center identified in Section 1827.5.
>
> (f) If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and are not nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice shall be mailed to the public guardian of the county in which the petition is filed.
>
> (g) If the petition states that the proposed conservatee is a member of a federally recognized Indian tribe, notice shall be mailed to the tribe.

Should a revision along those lines be added to the proposed law?

PARTIAL TRANSFERS

P-MHAC reaffirms its suggestion that the proposed law allow partial transfer of a conservatorship between California and a California tribe (i.e., the transfer

would affect less than all of the powers granted to the conservator, with the transferring entity retaining jurisdiction over any powers that are not transferred). This would facilitate the creation of complementary state and tribal conservatorships, to help cover any gaps that might exist in state court jurisdiction.[33]

As an alternative, the staff had recommended providing statutory authority for concurrent state and tribal court conservatorships, with non-overlapping powers, *as an exception to a rule of territorial exclusivity*.[34]

If the Commission wishes to authorize partial transfers, as an additional method of resolving gaps in state court jurisdiction, it could be done by adding a provision along these lines:

> 2003. If a conservatorship is transferred under this article from a court of this state to the court of a California Indian tribe or from the court of a California Indian tribe to a court of this state, the order that provisionally grants the transfer may expressly provide that specified powers of the conservator will not be transferred. Jurisdiction over the specified powers will be retained by the transferring state and will not be included in the powers that are granted to the conservator in the state that accepts the transfer.

Again, implementation of this approach would require that the proposed definition of "California Indian tribe" be made applicable to the new provision.

Does the Commission wish to add such a provision to the proposed law?

REGISTRATION

Memorandum 2013-55 explains that one aspect of the proposed registration provision — the language precluding registration when a conservatee resides in California — is inappropriate when applied to a member of a California tribe. That limitation makes sense when applied to other *states*, because the UAGPPJA jurisdictional rules are primarily based on the conservatee's territory of residence. The state with the strongest claim to jurisdiction over a proposed conservatee is that person's "home state." Thus, when a conservatee moves from one state to another, the new state should probably acquire jurisdiction, by means of transfer. The registration process should not be used to avoid such a

33. See Exhibit pp. 6-7. See also Memorandum 2013-55, pp. 26-27.
34. Memorandum 2013-55, p. 27 & Attachment p. 3 (proposed Prob. Code § 1995(b)).

transfer (thereby preserving the jurisdiction of the conservatee's former state of residence).

That argument does not apply to a member of a California tribe living in California. In that case, the tribe has concurrent jurisdiction and there is no clear reason to assume that jurisdiction should be transferred to the state courts.[35]

It is less clear whether the argument applies to a member of an out-of-state tribe. As discussed, it is possible that such a tribe could properly assert jurisdiction over a member residing in California.[36] If so, then it is not certain that a tribal conservatorship should be transferred to California, simply because the tribe member has moved to California.

Nonetheless, the staff refrained from recommending that out-of-state tribes be treated in the same way as California tribes with regard to registration. The staff noted that in some cases, where the tribe is located a great distance from California, the exercise of tribal jurisdiction over a member residing in California could be problematic.[37] For that reason, the implementing language was drafted with brackets, to allow for its application to all tribes or to California tribes only.[38]

P-MHAC supports the staff recommendations with regard to California tribes, but does not support extending the same treatment to out-of-state tribes. P-MHAC feels that such tribes should be treated in the same way as other states (i.e., their orders should not be registered if the conservatee resides in California).[39]

The Commission needs to decide whether to treat California tribes and out-of-state tribes in the same way with regard to registration.

Respectfully submitted,

Brian Hebert
Executive Director

35. Memorandum 2013-55, pp. 27-29.
36. See discussion supra; Memorandum 2013-55, pp. 5-6.
37. *Id.*
38. Memorandum 2013-55, p. 29 & Attachment p. 11.
39. See Exhibit p. 7.

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MEMORANDUM

Date
December 10, 2013

To
Mr. Brian Hebert
Executive Director
California Law Revision Commission

From
Judicial Council of California's Probate and Mental Health Advisory Committee

Hon. Mitchell L. Beckloff, Chair

Subject
Response to California Law Revision Commission staff memorandum 2013-55, Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act: Tribal Issues (Commission Study L-750).

Action Requested
Please review and provide to Commission members for their deliberations

Deadline
December 13, 2013

Contact
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This memorandum is the response of the California Judicial Council's Probate and Mental Health Advisory Committee (P-MHAC) to the recommendations of the staff of the California Law Revision Commission (CLRC or commission) contained in the staff memo to the commission on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) and "Tribal Issues," CLRC Memo 2013-55. The discussion is based on the following three questions the Commission may wish to consider, which impact many, if not all, of the points raised:

1. What benefits, if any, does the Commission believe a California Indian tribe will derive from UAGPPJA if it (the tribe) does not enact some form of that law?

2. What does the Commission believe will happen if a California tribe enacts UAGPPJA or some version of it, but the act itself does not contain, in some form, the provisions of Article VI proposed jointly by P-MHAC and the Judicial Council's California Tribal Court and State Court Forum (Forum)?

3. While the PMHAC/Forum proposal has the benefit of certainty and clarity of implementation that follows from the establishment of a bright line standard, P-MHAC would not oppose a permissive deference approach, such as that described at pages 21–23 of CLRC Staff Memo 2013-55.

CLRC Staff Memo 2013-55

1. CLRC staff recommends that federally-recognized tribes be treated as "states" (CLRC memo, at p. 4).

   P-MHAC agrees, but commission staff's proposed definition of "tribes" would delete reference to tribes or tribal courts that comply with the Indian Civil Rights Act.

   The Federal Constitutional standard of due process is applied to tribal courts by the federal Indian Civil Rights Act (ICRA) (25 U.S.C. § 1302, et seq.) The definition of "tribal court" in the recommendation from P-MHAC/Forum was "a unit of an Indian tribal justice system that complies with the requirements of the [ICRA]." The commission staff's redraft would move the definition of a tribal court into the definition of a tribe, which is fine, but would also delete reference to the ICRA.

   This omission may be important because the exercise of extraterritorial jurisdiction over a tribal member by a tribal court is apparently limited only by due process restraints; CLRC staff expresses no limits to the exercise of tribal court jurisdiction over tribal members, as is evidenced by the staff memo's application of "concurrent jurisdiction" of tribal courts and state courts not only to California tribes, but also to out-of-state tribes dealing with California-resident tribe members (CLRC memo, at pp. 25–26).

   State courts have statewide reach. California tribal courts probably would also, although this is not certain. However, a proposed conservatee in a conservatorship case filed in state court is given a degree of protection against a filing in a place far from his or her place of residence by venue provisions that identify the conservatee's county of residence as the preferred venue for the case (Prob. Code, § 2201). No comparable venue rules apparently apply to tribal courts. But extreme extraterritoriality would at least be subject to due process claims if the proposed definition of a "tribe" retains the reference to tribal court systems that comply with the ICRA.

   Article VI, the joint P-MHAC/Forum proposal, would extend tribal court "home state" preferred jurisdiction of conservatorships of tribal-member conservatees living anywhere

in the county or counties in which their tribes have tribal land. Some counties in which such lands are located are very much larger than the tribal areas within them, particularly in Southern California. This extension was agreed to by both supporting Judicial Council groups, one of which, the Forum, has members who are California tribal court judicial officers. P-MHAC believes this agreement represents a reasonable approach to the issue of extraterritoriality of tribal court orders and should be preserved in the CLRC proposal.

2. Tribal courts have some jurisdiction over members living outside tribal land. (CLRC memo, p. 5).

   P-MHAC agrees, but the degree is wholly unclear in the staff discussion and very well may be unclear generally. A potentially misleading citation in quoted text from the memo's principal secondary source, Jessup, *Cohen's Handbook of Federal Indian Law* ("*Cohen*") says that regulation of domestic relations *and probate matters* is closely related to core tribal interests and thus suitable for tribal court subject-matter jurisdiction. "Probate matters" in the *Cohen* discussion refers to descent and distribution and inheritance (decedent estate issues), not adult guardianship or conservatorship proceedings in which one or more persons, not the tribal government or a unit of that government, is appointed by a court to manage the personal and/or financial affairs of another person who is determined by the court to be incompetent to manage them. Descent and distribution of property of deceased tribal members, including property held in trust by the tribe or by the United States for the benefit of the tribe or the deceased individual tribal member, is clearly a matter of tribal interest; a conservatorship case involving two or more individuals is not so clearly such a matter, within the meaning of Public Law 280 and cases construing it.

   Another issue on this point arises from a unique feature of conservatorship matters that is not present in regular civil cases. Once a conservatorship is established, the court must continue to supervise the conservator and monitor the care, support, and financial management provided for the conservatee, often for a period of many years. Monitoring includes court review and potential audit of periodic accountings filed by estate conservators that may become contested and expensive litigation. If the conservatee and, often, the conservator, continue to live far from the locus of the tribal court, the supervision and monitoring are made more difficult and less effective, and the cost to the conservatorship estate and other remote interested parties to participate in the ongoing court proceedings greatly increased. These factors may present due process issues on a continuing basis not seen in other civil litigation.

3. Solution dependent on tribal adoption (CLRC memo, p.14).

   P-MHAC agrees that dueling conservatorships may continue to exist if California tribes do not adopt law equivalent to UAGPPJA or Article VI, but Article VI does not require

tribal adoption.[1] It would carefully prescribe only state court jurisdiction, and would provide a clear guide as to how state courts are to deal with conservatorships of members of California tribes when there is or may be a jurisdictional conflict with a California tribal court. That guide does not currently exist.

4. Procedural complication of concurrent jurisdiction (CLRC memo, pp. 14–15).

   This discussion (and the related discussions of "diminished member choice" and "compatibility with Public Law 280" immediately following) appears to conflate the *petitioner's* (who is usually also the proposed conservator) status as a tribal member with the membership status of the proposed conservatee. It is the proposed conservatee's tribal status that would confer concurrent jurisdiction under PL-280 in an action brought by a petitioner to determine that a conservatorship is necessary. Similarly, UAGPPJA and Article VI would establish the importance of the *conservatee's* presence or residence, not that of the petitioner or conservator.

   This discussion also includes an assertion that a tribal-member conservatorship petitioner living off tribal land would be required to petition the home-state California state court to decline jurisdiction before he or she could pursue the conservatorship in tribal court. This is incorrect; under UAGPPJA and proposed Article VI, assuming that the *proposed conservatee* is also a tribal member, the tribe is a "significant connection state." This means that the petitioner may file and the court may hear the matter, subject to the right of interested persons to object.

   The most likely objector would be the proposed conservatee or a close friend or family member acting on his or her behalf. Such an objection would most commonly occur if the objecting party is also opposed to a conservatorship or to the particular person proposed as conservator. This means that the jurisdictional objection would occur most commonly in connection with additional litigation on substantive grounds, which in turn means that any additional burden imposed by the jurisdictional dispute would usually be incremental only. The provisions of UAGPPJA and Article VI for consultation between courts would tend to make this portion of the dispute even less burdensome than otherwise might be the case.

[1] The one exception to that is Article VI's provision for transfers between state and California tribal courts, only because UAGPPJA itself confers transfer authority only between jurisdictions that have adopted some version of the law. This seems necessary, as no method outside UAGPPJA now confers authority to transfer conservatorship cases from one state to another short of dismissal of the proceeding in the first state followed by a new filing in the second state, and any authority to transfer a case to another state must be coupled with authority in the other state to accept it.

5. Staff recommendation against territorial exclusivity and deference (CLRC memo, pp. 16–23).

   P-MHAC supports territorial exclusivity of UAGPPJA, as modified for California tribes by Article VI, but would support permissive deference to tribal courts rather than mandatory or presumptive deference. If the Commission elects to recommend presumptive deference (CLRC Memo, pp. 19–20), P-MHAC agrees that UAGPPJA's standards for declining jurisdiction in favor of a tribal court are preferable to the standards derived from the Indian Child Welfare Act.

6. Communication between courts (CLRC memo, pp. 23–24).

   P-MHAC agrees with this portion of the memo.

7. California tribes and tribes in other states (CLRC memo, p. 25).

   This portion of the memo asserts, without cited authority, that a tribal court outside California may have subject-matter jurisdiction over a conservatorship for a tribal-member conservatee living here. Based on that assertion, staff recommends that the jurisdictional provisions the commission proposes to the Legislature should make no distinction between California tribes and those located elsewhere.

   P-MHAC does not support this recommendation. First, the problem of dual "home states" under UAGPPJA is not presented in this situation. Second, if due process issues may exist for the extraterritoriality of subject-matter jurisdiction of California tribes over members not residing on or near tribal lands but living elsewhere in California, these objections would have much greater weight when applied to attempts of tribal courts located in other states to consider conservatorship cases involving their members living in California. If tribes are to be treated as states under UAGPPJA, tribal courts located in other states should acquire no greater right under that law to proceed with conservatorships of persons present in this state than courts of other states would have under that law.

   That said, any interested person or organization may appear in support or opposition to an appointment or other petition filed in a conservatorship matter in this state. Arguably, this would include the conservatee's tribe. Once informed, say, by the proposed conservatee or another family member, of a case commenced concerning one of it is members, the tribe could file a Request for Special Notice in the case in order to become eligible for notice of the hearing of all subsequent petitions, and could appear in the case to support or oppose such petitions (Prob. Code, §§ 2700–2703). The Commission may also want to consider a provision expressly requiring that notice of all petitions be given to a

conservatee's or proposed conservatee's tribe if that tribe is located outside California.[2] The tribe could then take advantage of all opportunities available under UAGPPJA to urge transfer of the case to its court, if desired, or take any other action to protect the interests of its tribal-member conservatee. State courts with experience under the Indian Child Welfare Act are used to the participation of tribes as interested parties in state cases involving their members.

8. Gaps in scope of state jurisdiction under Public Law 280 (CLRC memo, pp. 26-27).

   This portion of the memo discusses the provisions recommended by P-MHAC/Forum that would permit transfer of only some of a conservator's powers to or from a tribal court. The staff recommendation is to be silent on partial transfers, relying on the "existing concurrent jurisdiction scheme."

   P-MHAC prefers express authority under the only device permitted under UAGPPJA, the transfer process. Commission staff suggests that instead of allowing partial transfers, the law could merely clarify that concurrent conservatorship petitions in state and tribal courts are permitted so long as they do not overlap (and they do not violate Public Law 280). P-MHAC has no objection to clarifying this point so properly informed petitioners may file complementary petitions in both courts if necessary, say, in a case in which the tribal-member conservatee not living on tribal land has interests in trust lands or other property that is not "fee" land owned outright by the conservatee, or a tribal-member conservatee living nearby but not on tribal land prefers that supervision of the performance of the personal conservator be the responsibility of the tribal court.

   However, a petitioner may not be familiar enough with the conservatee's situation and preferences when the appointment petition is filed. He or she may become aware of these and many other possibilities only after appointment by one court and efforts to identify and marshal the conservatee's property. Adjustments between the two court systems should be possible by resort to the partial transfer procedure.

   Commission staff's argument that transfers of powers a court does not have may be illusory is unpersuasive. State law gives estate conservators broad powers over the conservatee's real and personal property. The fact that some property may be subject to superior ownership interests in the United States or the tribe in trust for the tribe or the conservatee does not have any effect except that the conservator's general estate powers under state law will not apply to that specific property because of the supremacy of federal law. Transfer of court supervision of the conservator's management of that property from the state court to the tribal court merely acknowledges the special limits of

[2] Notice to California tribes of all petitions involving tribal members in California courts should not be necessary if Article VI or one of Commission staff's recommended alternatives is enacted.

Public Law 280 and confirms jurisdiction of the proper court to supervise the conservator's management of the property.

9. Registration (CLRC memo, pp. 27–29).

P-MHAC supports CLRC staff's discussion of registration of appointment orders of California tribal courts, but for the reasons discussed above under point 7, Tribes in Other States, disagrees that the conservatee's California residency should not disqualify registry of such orders of tribes located elsewhere. The policy supporting disqualification from registration of foreign appointment orders applies with equal force to orders of tribal courts located outside the state as it does to orders of courts from other states. Registration rather than transfer of such orders may deprive the California-resident conservatee of the benefit of California law and procedure applied to his or her conservatorship.