

First Supplement to Memorandum 2014-3

**Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act:
Conforming Revisions**

At pages 9-17, Memorandum 2014-3¹ discusses how to coordinate Probate Code Section 2505 with proposed Probate Code Section 2014. Two members of TEXCOM's working group on UAGPPJA (Jennifer Wilkerson and Peter Stern) have taken the time to provide input on that issue. A communication from Jennifer Wilkerson, presenting both of their views, is attached as an Exhibit for the Commission to consider. The staff will further discuss this matter at the upcoming meeting. We much appreciate the input from Ms. Wilkerson and Mr. Stern.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

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.

EMAIL FROM JENNIFER WILKERSON (2/4/14)

Re: TEXCOM working group comments on MM14-03

Dear Barbara:

At your request, I am providing comments from Peter Stern and myself to the issue raised in your Memo 2014-03, specifically regarding the effect of the proposed Registration procedure for out-of-state conservators (Section 2014), and existing Probate Code section 2505. We agree that Option #2 in your Memo presents a reasonable approach to address these concerns. My comments, following Peter's below, suggest a somewhat more protective approach than the options presented in your Memo.

Comments from Peter Stern, former TEXCOM Chair:

The conflict between existing Sec 2500 et seq., on the one hand, and the proposed UAGPPJA adoption (Section 2014) highlights the problem of applying existing law, which is structured on having a California conservatorship in place, with the registration process for a non California conservatorship. TEXCOM's input has helped to solidify CLRC's position that registration will apply only where the conservatee does not live in California. While it is possible for the conservator of a non-California-resident conservatee to live here, in most cases the conservator as well as the conservatee will be an out of state resident.

Sections 2500 et seq. offer solutions for resolving approvals of compromises and settlements where a California conservatee is involved and where the issue may have to do with an out of state settlement or conflict. The registration process involves taking action in a California court for a non California conservatee.

Our existing law provides for resolution of these issues in non California courts where California conservatees are involved, and I would agree with the Commission that it does not make sense to be more rigorous in treating non California conservatorships than we would be in treating California conservatorships; if the matter in question would have been handled out of state for a California conservatee in existing law, it should continue to be handled by an out of state court under the proposed California Conservatorship Jurisdiction Act. So Section 2014 has to be tweaked.

I don't believe the Commission's option 3 is adequate, because it would still require filing in a California court for something that under present law would be taken directly to a foreign court. While I favor the protection of California interests, it seems that the law would be overly restrictive and procedurally more complicated (and expensive) than necessary.

The Commission's option 1 — to excise 2505's application for a registered conservatorship — would force all actions into California courts. This is not the proper outcome.

Option 2 (page 15 of the CLRC memo) would head in the right direction, by allowing a matter to be resolved in a court, including one outside of California, where the matter is pending. This would preserve essentially the present outcome for an existing California conservatorship. I don't like the statutory construction in proposed (d)(3) and would suggest instead a corresponding modification of Section 2014. I leave the proper drafting to Ms. Gaal at the CLRC level.

Peter Stern

Comments of Jennifer L. Wilkerson, current TEXCOM member:

In the types of actions where court approval of a compromise or settlement is required, Probate Code section 2505 allows a California-appointed Conservator to seek the mandatory approval in another jurisdiction where the action is pending. I am inclined toward a stricter view than the Option #2 favored by staff counsel for the following reasons:

1. If an out-of-state Conservator registers the Order so that s/he can take action here, it is presumably because there is a connection to California. Under the circumstances covered by Section 2505 which require court approval, this would mean that:

- there is a real property interest in this state (Section 2501)
- there is a controversy of more than \$25,000 (Section 2502)
- there is a claim by the conservatee against the conservator or his/her attorney (Section 2503)
- there is a claim for support of the conservatee or one s/he is obligated to support, or a wrongful death or p.i claim (Section 2504)

In any of these instances in which a registration is occurring, either the property, a party or an incident would have a connection in this state. Indeed, it would seem a rare occurrence that the matter would not be pending in a California court if the out-of-state conservator were registering in order to take action in this state involving a compromise or modification.

2. A California Conservator who seeks approval for a compromise in another state nevertheless remains subject to jurisdiction by this state's court, such as at the next accounting where the settlement approved by another court would be disclosed and reviewed for any breach of duty by the conservator. There is no such oversight for compromises negotiated by an out-of-state Conservator who registers in order to take some action in California. For matters requiring court approval, a Conservator could seek to bypass California's more protective laws by opting to file in another jurisdiction. Even if there is an action pending in another state, the purpose of conservatorship is the protection of the conservatee's personal interest — which may not be the focus of the other pending proceeding, even arguably a marital dissolution proceeding in another state.

3. The additional effort and cost for the out-of-state Conservator to file a one-time petition for approval in California under Section 2505, even when the matter is pending elsewhere, is not a undue burden. This added protection is warranted since there is no

other oversight of the matter, which has some California connection if the registration here is necessary for the Conservator to act. Recall that, without UAGPPJA, there is currently no registration process and an out-of-state conservator must file an entire ancillary Conservatorship proceeding for authority to take any action in this State. Having to file simply a petition for approval under Section 2505 is a lesser burden.

I would propose that Section 2505 be modified as shown in the attachment (the redlining reflects changes to Option #2 in the CLRC memo (p. 15)) — which would allow the required approval of a compromise to occur:

- either in the court where the conservatorship is pending (under 2505(c)(2)), where presumably the conservatee's interests would be protected in another state,

- or in a California court, except for good cause.

This approach is consistent with the requirements for a registered Conservator to comply with all CA laws and procedures under Section 2014.

Thank you for your thoughtful consideration of these issues in incorporating UAGPPJA to our Code.

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2505. (a) Subject to subdivision (c), where the claim or matter is the subject of a pending action or proceeding, the court approval required by this article shall be obtained from the court in which the action or proceeding is pending.

(b) Where the claim or matter is not the subject of a pending action or proceeding, the court approval required by this article shall be obtained from one of the following:

- (1) The court in which the guardianship or conservatorship proceeding is pending.
- (2) The superior court of the county where the ward or conservatee or guardian or conservator resides at the time the petition for approval is filed.
- (3) The superior court of any county where a suit on the claim or matter properly could be brought.

(c) Where the claim or matter is the subject of a pending action or proceeding that is not brought in a court of this state, court approval required by this article shall be obtained from either of the following:

- (1) The court in which the action or proceeding is pending.
- (2) The court in which the guardianship or conservatorship proceeding is pending.

(d)(1) When a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 subdivisions (a) and (b) apply only when the action or proceeding is pending in a court in this state, and subdivision (c) (1) shall not apply

(2) when a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3, the court approval required by this article shall be obtained in accordance with Section 2014, except when a court, upon a showing of good cause, orders that the conservator may seek necessary approval or take the required action in a court of another state.

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(3) Notwithstanding Section 2014, when a conservatorship is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3, and the claim or matter in question is the subject of a pending action or proceeding that is not brought in a court of this state, the court approval required by this article may be obtained from the court in which the action or proceeding is pending