
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 18, 2012
DAVIS

A meeting of the California Law Revision Commission was held in Davis on October 18, 2012.

Commission:

Present: Xochitl Carrion, Chairperson
Damian Capozzola, Vice Chairperson
Diane Boyer-Vine, Legislative Counsel
Judge Patricia Cowett (Ret.)
Victor King
Taras Kihiczak
Susan Duncan Lee
Crystal Miller-O'Brien

Absent: Roger Dickinson, Assembly Member
Tom Harman, Senate Member

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Steve Cohen, Staff Counsel
Lynn Kirshbaum, Legal Extern
Hart Ku, Legal Extern

Consultants: None

Other Persons:

Sandra Bonato, State Bar Real Property Section Working Group, Berding & Weil
Marko Fong
Ron Kelly
Kerry Mazzoni, Executive Council of Homeowners
Jacquelyn Paige, AARP
Jennifer Wilkerson, State Bar Trust and Estates Section, Executive Committee

1 **Annual Report**

2 The Commission considered Memorandum 2012-38, presenting a staff draft
3 of the Commission's 2012-13 Annual Report.

4 The Commission did not approve the staff draft. Instead, the staff was
5 directed to prepare a new memorandum on the topic for consideration at the
6 December meeting. The new memorandum will present stylistic edits proposed
7 by Commissioner Miller-O'Brien. The memorandum will also discuss the
8 possibility of including the following material in the Annual Report:

- 9 • Brief statements (one or two sentences in length), from those
10 Commissioners who choose to submit them to the staff, about their
11 outside activities that are relevant to the Commission's current
12 work.
- 13 • An appendix containing biographical information on current
14 Commissioners.

LEGISLATIVE PROGRAM

15 The Commission considered Memorandum 2012-39, reporting on the
16 Commission's 2012 legislative program.

17 The Commission approved the staff's recommendations relating to AB 1624
18 (Gatto), which implements the Commission's recommendation on *Ownership of*
19 *Amounts Withdrawn from Joint Account*, 34 Cal. L. Revision Comm'n Reports 199
20 (2004).

21 STUDY H-855 — CLARIFICATION AND SIMPLIFICATION OF CID LAW

22 The Commission considered Memorandum 2012-44, proposing clean-up
23 legislation for Assembly Bills 805 and 806 (Torres), which implemented the
24 Commission's recommendation on *Statutory Clarification and Simplification of CID*
25 *Law*, 40 Cal. L. Revision Comm'n Reports 235 (2010).

26 The Commission approved all of the staff recommendations in the
27 memorandum and instructed the staff to prepare a draft final recommendation
28 consistent with those decisions for consideration at the Commission's December
29 meeting.

1 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
2 PROTECTIVE PROCEEDINGS JURISDICTION ACT

3 The Commission considered Memorandum 2012-40 and its First Supplement,
4 Memorandum 2012-42, and part of Memorandum 2012-43 (pp. 1-15 and top of p.
5 16), which discuss the Uniform Adult Guardianship and Protective Proceedings
6 Jurisdiction Act (“UAGPPJA”).

7 The Commission made the following decisions, which will guide the staff in
8 preparing future memoranda and drafting a tentative recommendation:

9 **Transfer of Conservatorship**

10 *Elective Review of Transferred Conservatorship*

11 Existing California law on “elective review” of a conservatorship should
12 apply to a conservatorship that is transferred pursuant to Article 3 of UAGPPJA.

13 Notice of the right to elective review of a conservatorship should be given, at
14 the time of transfer, to every person who is entitled to notice of the transfer
15 proceeding.

16 *Review of Capacity of Conservatee in Transferred Conservatorship*

17 In the first instance of review of a transferred conservatorship in which the
18 conservatee’s capacity is contested, there shall be a rebuttable presumption that
19 the conservatee has capacity to make decisions. Clear and convincing evidence
20 shall be required to rebut the presumption.

21 *Review of Choice of Conservator in Transferred Conservatorship*

22 Probate Code Section 2650 should be amended to provide that a conservator
23 who was appointed by another jurisdiction may be removed by the court if that
24 person would not have been appointed under California law. Probate Code
25 Section 2653(c), which assesses costs against a conservator who is removed for
26 cause, should not apply to a conservator who is removed for the reason
27 described above.

28 There should be some form of stay on the exercise of a conservator’s powers
29 during the pendency of a proceeding to remove a conservator for the cause
30 discussed above. The stay should be subject to an appropriate exception for
31 emergencies. If existing conservatorship law does not adequately address those
32 issues, the staff will develop language to do so and present it to the Commission
33 for consideration.

1 **Registration and Recognition**

2 *Limitation on Use of Registration*

3 Registration should not be used as a means of avoiding transfer. The staff
4 should develop language to appropriately limit the use of registration when a
5 conservatee establishes residence in California.

6 *Third Party Liability*

7 The proposed law should include express liability protection for a third party
8 who relies on the apparent authority of a registered conservator, similar to the
9 protection provided to a third party who relies on the apparent authority of an
10 attorney-in-fact under Probate Code Section 4303.

11 *Effect of Registration of Out-of-State Conservatorship in California*

12 If an out-of-state conservatorship is registered in California under UAGPPJA,
13 the conservator must promise to comply with California law while taking action
14 in this state. California's version of UAGPPJA should expressly require as much,
15 perhaps in Section 403(a). The conservator's promise should be in the form of an
16 attestation, affirmation, certification, or the like, not a pledge under penalty of
17 perjury. For a future meeting, the staff should propose specific language to
18 incorporate into a tentative recommendation.

19 In addition to including a promise by the conservator as described above, the
20 registration documentation under California's version of UAGPPJA should
21 include boilerplate stating that the out-of-state conservator is subject to
22 California law, is not authorized to do anything prohibited by California law,
23 and is required to follow California procedures. As discussed at pages 10-11 of
24 Memorandum 2012-42, this boilerplate would provide notice to third parties that
25 the powers enumerated in another state's conservatorship order are subject to
26 any relevant restrictions that exist in California.

27 *Effect of Registration of California Conservatorship in Another Jurisdiction*

28 A California conservator must comply with California law throughout the
29 duration of the conservatorship, even while taking action in another state
30 pursuant to a UAGPPJA registration. If California adopts UAGPPJA, this point
31 should be expressly stated, perhaps by revising Probate Code Section 2300 along
32 the following lines:

1 2300. Before the appointment of a guardian or conservator is
2 effective, the guardian or conservator shall:

3 (a) Take an oath to perform the duties of the office according to
4 law, ~~which~~. The oath obligates the guardian or conservator to
5 comply with the law of this state, as well as other applicable law, at
6 all times, in any location within or without the state. The oath shall
7 be attached to or endorsed upon the letters.

8 (b) File the required bond if a bond is required.

9 *Technical Drafting Issues*

10 References to the “appointing state” should be adjusted to reflect the fact that
11 the state that first created a conservatorship may not be the state that currently
12 has jurisdiction over the conservatorship.

13 References to “filing as a foreign judgment” shall be fleshed out, to require
14 the filing of papers with a clerk of a superior court.

15 The proposed law should make clear that registration papers are recordable
16 in county property records. The staff will contact the California Land Title
17 Association to solicit their input on real property title-related issues.

18 **Special Rules for Certain Types of Actions or Decisions**

19 *Correction of Technical Mistakes*

20 When time permits, the staff should prepare a separate tentative
21 recommendation proposing to fix the technical mistakes described at page 5 of
22 Memorandum 2012-43.

23 *Special Rules Relating to a Conservatee with Dementia*

24 The staff does not need to search the regulations of all 50 states for provisions
25 similar to Probate Code Section 2356.5. It is sufficient to accurately reflect the
26 limitations of the staff’s research.

27 *Jurisdiction*

28 With regard to Article 2 of UAGPPJA relating to jurisdiction, no drafting
29 adjustments appear necessary to protect and effectuate the policy interests
30 underlying California’s special statute governing conservatees with dementia
31 (Prob. Code § 2356.5).

32 *Remainder of Memorandum 2012-43*

33 The Commission will consider the remainder of Memorandum 2012-43
34 (bottom of p. 16 to p. 36) at a future meeting.

1 **Other Miscellaneous Matters**

2 *Other Statutory Protections*

3 The staff will investigate whether the Welfare and Institutions Code or other
4 California law provides for public supervision of a conservatorship and, if so,
5 whether that supervision is relevant to the issues being examined in this study.

6 *Question for ULC Representative*

7 When the Commission has an opportunity to pose questions to a
8 representative of the Uniform Law Commission, it will ask about the intended
9 meaning of the term “ineligible” in UAGPPJA Section 302.

10 STUDY R-100 — FISH AND GAME LAW

11 The Commission considered Memorandum 2012-44, which provides
12 background information on a proposed study of Fish and Game Law. The
13 Commission approved the staff’s recommendation as to how to approach that
14 study.

APPROVED AS SUBMITTED

Date

APPROVED AS CORRECTED
(for corrections, see Minutes of next meeting)

Chairperson

Executive Director