
MINUTES OF MEETING
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 10, 2013
DAVIS

A meeting of the California Law Revision Commission was held in Davis on October 10, 2013.

Commission:

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

Absent: Assembly Member Roger Dickinson
Senator Ted Lieu

Staff: Brian Hebert, Executive Director
Barbara Gaal, Chief Deputy Counsel
Kristin Burford, Staff Counsel
Steve Cohen, Staff Counsel

Consultants: None

Other Persons:

Jessica A. Braverman, Braverman Mediation & Consulting
Paul Dubow
Ann Gilmour, Administrative Office of the Courts
Stephen Gizzi
Alex Graves, Alzheimer's Association
Nicholas Heidorn
Ron Kelly
James R. Madison
Michael Martinez
Benjamin Orzeske, Uniform Law Commission
Jacquelyn Paige, AARP
Jedediah Parr, California Indian Legal Services
Nancy L. Powers, Powers Law Office
Erica Sanders, Office of Senator Ted W. Lieu

1	June 2014	Sacramento
2	June 12 (Thur.)	10:00 am – 4:00 pm
3	September 2014	Los Angeles
4	Sept. 5 (Fri.)	10:00 am – 4:00 pm
5	October 2014	Davis
6	Oct. 23 (Thur.)	10:00 am – 4:00 pm
7	December 2014	San Diego
8	Dec. 11 (Thur.)	10:00 am – 4:00 pm

9 LEGISLATIVE PROGRAM

10 The Commission considered Memorandum 2013-43, reporting on the
11 Commission’s 2013 legislative program. No Commission action was required or
12 taken.

13 STUDY K-402 — RELATIONSHIP BETWEEN MEDIATION CONFIDENTIALITY AND
14 ATTORNEY MALPRACTICE AND OTHER MISCONDUCT

15 The Commission considered Memorandum 2013-47 and its First and Second
16 Supplements, presenting comments on the relationship between mediation
17 confidentiality and attorney malpractice and other misconduct. The Commission
18 heard oral testimony from persons in attendance and received the written
19 materials attached to the Third Supplement to Memorandum 2013-47. No
20 Commission action was required or taken.

21 STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
22 PROTECTIVE PROCEEDINGS JURISDICTION ACT

23 The Commission considered Memorandum 2013-44 and its First and Second
24 Supplements, presenting and analyzing comments relating to the Tentative
25 Recommendation on *Uniform Adult Guardianship and Protective Proceedings*
26 *Jurisdiction Act* (June 2013) (hereafter, “Tentative Recommendation”). The
27 Commission also considered Memorandum 2013-45 (focusing on comments
28 specific to Indian tribes) and Memorandum 2013-46 (describing UAGPPJA
29 adjustments made in other jurisdictions).

30 For the December meeting, the staff should prepare a draft of a final
31 recommendation, which incorporates the revisions described below, as well as

1 any necessary conforming changes to the preliminary part, proposed legislation,
2 and Comments.

3 **Global Stylistic Revision**

4 Throughout the proposed statutory text, the staff should replace “must” with
5 “shall,” in conformity with California’s preferred drafting practice.

6 **Proposed Prob. Code § 1981. Limitations on Scope of Chapter**

7 Proposed Probate Code Section 1981 and the corresponding Comment should
8 be revised as follows:

9 1981. (a)(1) This chapter does not apply to a minor

10 (b) This chapter does not apply to any proceeding in which a
11 person is involuntarily committed to a mental health facility or
12 subjected to other involuntary mental health care

13 (c) Article 3 (commencing with Section 2001) does not apply to
14 an adult with a developmental disability, or to any proceeding in
15 which a person is appointed to provide personal care or property
16 administration for an adult with a developmental disability

17 (d) Application of this chapter to a conservatee with dementia is
18 subject to the express limitations of Sections 2002 and 2014, as well
19 as the other requirements of this chapter.

20 **Comment.** Section 1981 restricts the scope of this chapter.

21

22 Subdivision (d) serves to highlight the rules applicable to a
23 conservatee with dementia.

24 No other changes should be made to proposed Section 1981, but the preliminary
25 part (narrative explanation) of the Commission’s proposal should include a new
26 footnote, along the following lines:

27 40a/ After California gains some experience with the proposed
28 California Conservatorship Jurisdiction Act, it might be easier to
29 discern how to effectively apply the Act’s transfer procedure to an
30 adult with a developmental disability while ensuring that the
31 adult’s interests are adequately protected. If that occurs, then the
32 Legislature could revise the Act to extend the transfer procedure to
33 such an adult, subject to any necessary conditions or qualifications.

34 **Proposed Prob. Code § 1982. Definitions**

35 Subdivisions (a) through (l) of proposed Probate Code Section 1982 should be
36 left as in the Tentative Recommendation.

1 The Commission made no decision on whether to include federally
2 recognized Indian tribes in the definition of “State” in subdivision (m) of
3 proposed Probate Code Section 1982. See discussion of Tribal Issues, below.

4 **Proposed Prob. Code § 1983. International Application of Chapter**

5 The Comment to proposed Probate Code Section 1983 should be revised as
6 follows:

7 **Comment.** Section 1983 is the same as Section 103 of the
8 Uniform Adult Guardianship and Protective Proceedings
9 Jurisdiction Act (2007) (“UAGPPJA”). In determining whether to
10 treat a foreign country as if it were a state pursuant to this section,
11 the court should consider all relevant factors, including, but not
12 limited to, evidence showing any of the following:

13 (1) The judicial system in the foreign country does not regularly
14 provide impartial tribunals.

15 (2) The judicial system in the foreign country does not regularly
16 provide procedures compatible with the requirements of due
17 process of law.

18 (3) The specific proceeding in the foreign court was not
19 conducted in an impartial tribunal.

20 (4) The specific proceeding in the foreign court was not
21 compatible with the requirements of due process of law.

22 (5) An aspect of the foreign proceeding is repugnant to the
23 public policy of this state or of the United States.

24 (6) The circumstances of the foreign proceeding raise substantial
25 doubt about the integrity of the foreign judicial system.

26 See generally Code Civ. Proc. § 1716; Uniform Foreign-Country
27 Money Judgments Recognition Act § 4 (2005).

28 **Proposed Prob. Code § 1985. Cooperation Between Courts**

29 Proposed Probate Code Section 1985 should be revised as follows:

30 1985. (a) In a conservatorship proceeding in this state, a court of
31 this state may request the appropriate court of another state to do
32 any of the following:

33 (1) ...

34 (b) If a court of another state in which a conservatorship
35 proceeding is pending requests assistance of the kind provided in
36 subdivision (a), a court of this state has jurisdiction for the limited
37 purpose of granting the request or making reasonable efforts to
38 comply with the request.

39 (c) Travel and other necessary and reasonable expenses incurred
40 under subdivisions (a) and (b) may be assessed against the parties
41 according to the law of this state.

1 **Proposed Prob. Code § 1996. Appropriate Forum**

2 Proposed Probate Code Section 1996 and the corresponding Comment should
3 be revised as follows:

4 1996. (a)(1) A court of this state having jurisdiction under
5 Section 1993 to appoint a conservator may decline to exercise its
6 jurisdiction if it determines at any time that a court of another state
7 is a more appropriate forum.

8 (2) The issue of appropriate forum may be raised upon petition
9 of any interested person, the court's own motion, or the request of
10 another court.

11 (3) The petitioner, or, if there is no petitioner, the court in this
12 state, shall give notice of the petition, motion, or request to the
13 same persons and in the same manner as for a petition for a
14 conservatorship under Section 1801. The notice shall state the basis
15 for the petition, motion, or request, and shall inform the recipients
16 of the date, time, and place of the hearing under paragraph (4). The
17 notice shall also advise the recipients that they have a right to object
18 to the petition, motion, or request. The notice to the potential
19 conservatee shall inform the potential conservatee of the right to be
20 represented by legal counsel if the potential conservatee so chooses,
21 and to have legal counsel appointed by the court if the potential
22 conservatee is unable to retain legal counsel.

23 (4) The court shall hold a hearing on the petition, motion, or
24 request.

25 (b) If a court of this state declines to exercise its jurisdiction
26 under subdivision (a), it shall grant the petition, motion, or request,
27 and either dismiss or stay ~~the any conservatorship proceeding~~
28 ~~pending in this state. The court's order dismissing or staying the~~
29 ~~proceeding shall be based on evidence presented to the court. The~~
30 ~~order shall be in a record and shall expressly state that the court~~
31 ~~declines to exercise its jurisdiction because a court of another state~~
32 ~~is a more appropriate forum. The court may impose any condition~~
33 ~~the court considers just and proper, including the condition that a~~
34 ~~petition for the appointment of a conservator of the person,~~
35 ~~conservator of the estate, or conservator of the person and estate be~~
36 ~~filed promptly in another state.~~

37 (c) In determining whether it is an appropriate forum, the court
38 shall consider all relevant factors, including

39 **Comment.** Section 1996 is similar to Section 206 of the Uniform
40 Adult Guardianship and Protective Proceedings Jurisdiction Act
41 (2007) ("UAGPPJA"). Revisions have been made to conform to
42 California terminology for the proceedings in question. See Section
43 1982 & Comment (definitions); see also Section 1980 Comment.

44 Revisions have also been made to:

45 (1) Permit an interested person, a court of this state, or a
46 court of another state to raise the issue of appropriate

1 forum by a petition, motion, or request specifically
2 directed to that issue, without filing a conservatorship
3 proceeding in this state.

4 (2) Specify procedural requirements applicable to such a
5 petition, motion, or request. Among other things, a
6 hearing on the petition, motion, or request is
7 mandatory in every case. If there is no opposition, the
8 court may place the matter on the consent calendar.

9 ~~(1)~~(3) Require a court to prepare a record

10 ~~(2)~~(4) Emphasize that in determining whether

11 **Proposed Prob. Code § 1997. Jurisdiction Declined by Reason of Conduct**

12 Subdivision (b) of proposed Probate Code Section 1997 should be revised as
13 follows:

14 (b) If a court of this state determines that it acquired jurisdiction
15 to appoint a conservator because a party seeking to invoke its
16 jurisdiction engaged in unjustifiable conduct, it may assess against
17 that party necessary and reasonable expenses, including attorney's
18 fees, investigative fees, court costs, communication expenses,
19 medical examination expenses, witness fees and expenses, and
20 travel expenses. The court may not assess fees, costs, or expenses of
21 any kind against this state or a governmental subdivision, agency,
22 or instrumentality of this state unless authorized by law other than
23 this chapter.

24 The Comment should be revised as follows:

25 **Comment.** Section 1997 is similar to Section 207 of the Uniform
26 Adult Guardianship and Protective Proceedings Jurisdiction Act
27 (2007) ("UAGPPJA"). Revisions have been made to conform to
28 California terminology for the proceedings in question. See Section
29 1982 & Comment (definitions); see also Section 1980 Comment.

30 In subdivision (b), revisions have also been made to expressly
31 authorize recovery of medical examination expenses. For a similar
32 provision, see Conn. Gen. Stat. Ann. § 45-667m(b).

33 For limitations on the scope of this chapter, see Section 1981 &
34 Comment.

35 **Proposed Prob. Code § 1998. Notice of Proceeding**

36 Proposed Probate Code Section 1998 should be revised as follows:

37 1998. If a petition for the appointment of a conservator of the
38 person, conservator of the estate, or conservator of the person and
39 estate is brought in this state and this state was not the home state
40 of the proposed conservatee on the date the petition was filed, in
41 addition to complying with the notice requirements of this state,
42 the petitioner shall give notice of the petition or of a hearing on the

1 petition ~~must be given~~ to those persons who would be entitled to
2 notice of the petition or of a hearing on the petition if a proceeding
3 were brought in the home state of the proposed conservatee. The
4 notice ~~must~~ shall be given in the same manner as notice is required
5 to be given in this state.

6 The Comment should be revised along the following lines:

7 **Comment.** Section 1998 is similar to Section 208 of the Uniform
8 Adult Guardianship and Protective Proceedings Jurisdiction Act
9 (2007) (“UAGPPJA”). Revisions have been made to conform to
10 California drafting practices and terminology for the proceedings
11 in question. See Section 1982 & Comment (definitions); see also
12 Section 1980 Comment. Revisions have also been made to ~~reflect~~
13 ~~that some states require notice of a hearing on a petition, as~~
14 ~~opposed to notice of a petition.~~

15 (1) Reflect that some states require notice of a hearing on a
16 petition, as opposed to notice of a petition.

17 (2) Make clear that the petitioner is responsible for giving
18 the required notice. For a similar provision, see Ohio
19 Rev. Code Ann. § 2112.26.

20 See Section 1991(a) (defining “home state”). For limitations on
21 the scope of this chapter, see Section 1981 & Comment.

22 **Proposed Prob. Code § 2001. Transfer of Conservatorship to Another State**

23 Subdivision (b) of proposed Probate Code Section 2001 should be revised as
24 follows:

25 (b) ~~Notice~~ The petitioner shall give notice of a hearing on a
26 petition under subdivision (a) ~~must be given~~ to the persons that
27 would be entitled to notice of a hearing on a petition in this state
28 for the appointment of a conservator.

29 The Comment should be revised as follows:

30 **Comment.** Section 2001 is similar to Section 301 of the Uniform
31 Adult Guardianship and Protective Proceedings Jurisdiction Act
32 (2007) (“UAGPPJA”). Revisions have been made to conform to
33 California drafting practices and terminology for the proceedings
34 in question. See Section 1982 & Comment (definitions); see also
35 Section 1980 Comment.

36

37 Subdivision (b) corresponds to Section 301(b) of UAGPPJA.
38 Revisions have been made to specify that the petitioner is
39 responsible for giving the notice (cf. Ohio Rev. Code Ann.
40 2112.31(B)), and to conform to California practice, under which a
41 party is required to give notice of a hearing on a motion or petition,
42 not just notice of a petition.

1 Subdivision (c)

2 **Proposed Prob. Code § 2002. Accepting Conservatorship Transferred From**
3 **Another State**

4 The Commission made the following decisions relating to proposed Probate
5 Code Section 2002:

6 *Sequencing*

7 The sequencing of the transfer process should be revised along the following
8 lines:

- 9 (1) An out-of-state conservator files a transfer petition in the out-of-
10 state court. If certain requirements are met, the court issues a
11 provisional order granting the transfer.
- 12 (2) The out-of-state conservator files a petition in a California court,
13 asking that court to accept the proceeding.
- 14 (3) The California court appoints a court investigator, who conducts
15 an investigation and prepares a report.
- 16 (4) The California court holds a hearing on the petition. If certain
17 requirements are met, the California court issues a provisional
18 order accepting the transfer.
- 19 (5) The California court orders a further investigation of the
20 conservatorship.
- 21 (6) Not later than 60 days after issuing a provisional order accepting
22 the transfer, the California court must determine whether the
23 conservatorship will need to be modified to conform to California
24 law. The court shall conduct a hearing on that matter.
- 25 (7) Upon receiving the final order granting the transfer, the California
26 court issues a final order accepting the proceeding and appointing
27 a conservator.
- 28 (8) After the California court issues a final order accepting the
29 proceeding, the conservator must take an oath, file the required
30 bond, and acknowledge receipt of certain information the court is
31 required to provide. In general, the conservator cannot begin to
32 function as such in California until all those steps occur and the
33 clerk of the court issues the letters of conservatorship.

34 *Scope of Court Investigation*

35 The court investigation under proposed Section 2002 should be bifurcated.
36 Some of the investigation should occur before the court decides whether to
37 provisionally accept a transfer. That phase of the investigation should focus on
38 the requirements for provisionally accepting a transfer.

1 Further investigation should occur after a court provisionally accepts a
2 transfer. The full scope of the investigation should be as specified in proposed
3 Probate Code Section 1851.1.

4 *Content of a Petition to Accept a Transfer*

5 Paragraph (a)(3) of proposed Section 2002 should be revised, and a new
6 paragraph should be added, as follows:

7 (3) On the first page of the petition, the petitioner ~~must~~ shall
8 state that the conservatorship ~~is eligible for transfer and~~ does not
9 fall within the limitations of Section 1981. The body of the petition
10 shall allege facts showing that this chapter applies and the
11 requirements for transfer of the conservatorship are satisfied.

12 (4) The petition shall specify any modifications necessary to
13 conform the conservatorship to the law of this state, and the terms
14 of a proposed final order accepting the conservatorship.

15 A conforming change should be made to the Comment, along the following
16 lines:

17 **Comment.** Section 2002 is similar to

18 Paragraphs (1) and (2) of subdivision (a) correspond to Section
19 302(a) of UAGPPJA. ~~Paragraph (3)~~ Paragraphs (3) and (4) of
20 subdivision (a) provide guidance on the content of a petition under
21 this section. The first sentence of paragraph (3) serves to facilitate
22 compliance with Section 1981 (scope of chapter).

23

24 *Concurrent Petition for a Temporary Conservatorship*

25 The Commission discussed whether to add a new paragraph to subdivision
26 (a) of proposed Section 2002, along the following lines:

27 (5) A petition under this section may be accompanied by a
28 petition for the appointment of a temporary conservator under
29 Section 1994 and Chapter 3 (commencing with Section 2250) of Part
30 4. The petition for the appointment of a temporary conservator
31 shall request the appointment of a temporary conservator eligible
32 for appointment in this state, and shall be limited to powers
33 authorized for a temporary conservator in this state. For purposes
34 of Chapter 3 (commencing with Section 2250) of Part 4, the court
35 shall treat a petition under this section as the equivalent of a
36 petition for the appointment of a general conservator.

37 The Commission decided to add such a paragraph, but directed the staff to revise
38 the first sentence to make clear that a petition for the appointment of a temporary
39 conservator may be filed at any time; it need not be submitted along with a

1 transfer petition under proposed Section 2002. The staff should flag the revised
2 language for the Commission to review at its next meeting.

3 *Notice Requirements*

4 Subdivision (b) of proposed Section 2002 should be revised along the
5 following lines:

6 (b) ~~Notice~~ The petitioner shall give notice of a hearing on a
7 petition under subdivision (a) ~~must be given~~ to those persons that
8 would be entitled to notice if the petition were a petition for the
9 appointment of a conservator in both the transferring state and this
10 state. The petitioner shall also give notice to any attorney of record
11 for the conservatee in the transferring state and to any attorney
12 appointed or appearing for the conservatee in this state. The ~~notice~~
13 ~~must be given~~ petitioner shall give the notice in the same manner as
14 that notice of a petition for the appointment of a conservator is
15 required to be given in this state, except that notice to the
16 conservatee shall be given by mailing the petition instead of by
17 personal service of a citation.

18

19 **Comment...** Subdivision (b) corresponds to Section 302(b) of
20 UAGPPJA. Revisions have been made to specify that the petitioner
21 is responsible for giving the notice, and to conform to California
22 practice, under which a party is required to give notice of a hearing
23 on a motion or petition, not just notice of a petition. Revisions have
24 also been made to eliminate the necessity for personal service of a
25 citation on the conservatee, and make clear that all attorneys for the
26 conservatee must receive notice.

27 *Appointment of Counsel*

28 Probate Code Section 1471 should be amended to make clear that it applies to
29 a transfer of a conservatorship:

30 1471. (a) If a conservatee, proposed conservatee, or person
31 alleged to lack legal capacity is unable to retain legal counsel and
32 requests the appointment of counsel to assist in the particular
33 matter, whether or not such person lacks or appears to lack legal
34 capacity, the court shall, at or before the time of the hearing,
35 appoint the public defender or private counsel to represent the
36 interest of such person in the following proceedings under this
37 division:

38 (1) A proceeding to establish or transfer a conservatorship or to
39 appoint a proposed conservator.

40

1 **Comment.** Section 1471 is amended to make clear that it applies
2 when a conservatorship is transferred under the California
3 Conservatorship Jurisdiction Act (Sections 1980-2024).

4 The Comment to proposed Section 2002 should be revised to refer to the
5 provisions on appointment of counsel:

6 **Comment.** Section 2002 is similar to Section 302 of the Uniform
7 Adult Guardianship and Protective Proceedings Jurisdiction Act
8 (2007) (“UAGPPJA”). Revisions have been made to conform to
9 California terminology for the proceedings in question. See Section
10 1982 & Comment (definitions); see also Section 1980 Comment. For
11 limitations on the scope of this chapter, see Section 1981 &
12 Comment. For guidance regarding the fee for filing a petition under
13 this section, see Gov’t Code § 70655. For rules governing
14 appointment of counsel, see Sections 1470-1472; see also Section
15 1851.1(b)(9)-(12).

16

17 *Hearing on Whether to Provisionally Accept a Transfer*

18 No changes should be made in the provision that requires a hearing on
19 whether to provisionally accept a transfer (labeled as proposed Section 2002(c) in
20 the Tentative Recommendation).

21 *Standard for Issuing an Order Provisionally Accepting a Transfer*

22 The provision specifying the standard for provisionally accepting a transfer
23 (labeled as proposed Section 2002(d) in the Tentative Recommendation) should
24 be revised as follows:

25 (d) The court shall issue an order provisionally granting a
26 petition filed under subdivision (a) unless any of the following
27 occurs:

28 (1) ~~An objection is made and the~~ The court determines that
29 transfer of the proceeding would be contrary to the interests of the
30 conservatee.

31 (2) The court determines that, under the law of the transferring
32 state, the conservator is ineligible for appointment in this state.

33 (3) The court determines that, under the law of this state, the
34 conservator is ineligible for appointment in this state, and the
35 transfer petition does not identify a replacement who is willing and
36 eligible to serve in this state.

37 (4) The court determines that this chapter is inapplicable under
38 Section 1981.

39 Footnote 164 in the preliminary part should be revised as follows:

1 164/ If the existing conservator was ineligible, *under the law of*
2 *the transferring state*, to serve in California, the California court
3 could not provisionally approve the transfer. See proposed Prob.
4 Code § 2002(d)(2) & Comment *infra*. The court supervising the
5 proceeding in the transferring state would have to replace the
6 conservator before transferring the proceeding. *Id.*

7 In contrast, if the existing conservator was ineligible, *under*
8 *California law*, to serve in California, the California court could
9 provisionally approve the transfer, so long as the transfer petition
10 identifies a replacement who is willing and eligible to serve in
11 California. See proposed Prob. Code § 2002(d)(3) & Comment *infra*.

12 The underlying concept is that an eligibility issue would have to
13 be resolved by the court best-situated to make the determination:
14 The transferring court would handle ineligibility that is based on
15 the law of the transferring state, and the California court would
16 handle ineligibility that is based on California law.

17 *Objections*

18 A new subdivision should be added to proposed Section 2002, expressly
19 stating that any person entitled to notice of a transfer petition may object to the
20 petition. The new provision should state the permissible grounds for objection,
21 which should mirror the permissible grounds for denying the petition.

22 *When the Conservator Can Begin to Act in California*

23 Immediately after the paragraph specifying when the conservator of a
24 transferred conservatorship can begin to act in California (labeled as proposed
25 Section 2002(e)(2) in the Tentative Recommendation), a new paragraph should be
26 inserted, along the following lines:

27 (3) Paragraph (2) does not preclude a person who has been
28 appointed as a temporary conservator pursuant to Chapter 3
29 (commencing with Section 2250) of Part 4 from taking action in this
30 state pursuant to the order establishing the temporary
31 conservatorship.

32 *When in Rome Principle*

33 The paragraph stating the “When in Rome Principle” (labeled as proposed
34 Section 2002(e)(3) in the Tentative Recommendation) should be revised along the
35 following lines:

36 (3) When a transfer to this state becomes effective, the
37 conservatorship is subject to the law of this state and shall
38 thereafter be treated as a conservatorship under the law of this
39 state. If a law of this state, including, but not limited to, Section
40 2356.5, mandates compliance with special requirements to exercise

1 a particular conservatorship power or take a particular step, the
2 conservator of a transferred conservatorship may not exercise that
3 power or take that step without first complying with those special
4 requirements.

5 *Responsibility for Conducting the Court Investigation*

6 The Commission discussed the concerns expressed by the California State
7 Association of Public Administrators, Public Guardians, and Public Conservators
8 (“CAPAPGPC”). The staff should seek further information regarding those
9 concerns, from CAPAPGPC and other knowledgeable sources.

10 *Hearing on Conformity Determination*

11 The provision requiring the court to determine whether the conservatorship
12 needs to be modified to conform to California law (labeled as proposed Section
13 2002(f) in the Tentative Recommendation) should be revised to make more clear
14 that a hearing on that matter is mandatory. The same provision should also be
15 modified to state that the court “may take any *action* necessary to conform to the
16 law of this state,” instead of stating that the court “may take any *step* necessary to
17 achieve compliance with the law of this state.”

18 **Proposed Prob. Code §§ 2011-2013. Registration of Order Appointing**
19 **Conservator**

20 Proposed Probate Code Section 2011 (registration of order appointing
21 conservator of person) should be revised along the following lines:

22 2011. If a conservator of the person has been appointed in
23 another state and a petition for the appointment of a conservator of
24 the person is not pending in this state, the conservator of the person
25 appointed in the other state, after ~~notifying the court supervising~~
26 ~~the conservatorship of an intent to register~~ providing notice
27 pursuant to subdivision (b), may register the conservatorship order
28 in this state by filing certified copies of the order and letters of
29 office, and proof of notice as required herein, together with a cover
30 sheet approved by the Judicial Council, in the superior court of any
31 appropriate county of this state.

32 (b) At least fifteen (15) days before registering a conservatorship
33 in this state, the conservator shall provide notice of an intent to
34 register to all of the following:

35 (1) The court supervising the conservatorship.

36 (2) Every person who would be entitled to notice of a petition
37 for the appointment of a conservator in the state where the
38 conservatorship is pending.

39 (3) Every person who would be entitled to notice of a petition
40 for the appointment of a conservator in this state.

1 **Comment.** Subdivision (a) of Section 2011 is similar to Section
2 401 of the Uniform Adult Guardianship and Protective Proceedings
3 Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to
4 conform to California terminology for the proceedings in question.
5 See Section 1982 & Comment (definitions); see also Section 1980
6 Comment. Revisions have also been made to expand and clarify the
7 notice requirement (see subdivision (b)) and to clarify the proper
8 filing procedure under California law. The reference to the
9 “appointing court” has been replaced with a reference to the “court
10 supervising the conservatorship,” because the court currently
11 supervising a conservatorship might not be the same court that
12 originally appointed the conservator. See Article 3 (transfer of
13 conservatorship).

14 Paragraph (1) of subdivision (b) is similar to the notice
15 requirement in UAGPPJA Section 401. Paragraphs (2) and (3) of
16 subdivision (b) provide for additional notice, so as to alert
17 interested persons that the conservatorship is being registered in
18 California and the conservator might take action in California. If a
19 person has concerns about such action, the person can either
20 challenge a proposed action directly in a California court, or seek
21 redress in the court supervising the conservatorship.

22 For the effect of a registration under this section, see

23 The section should be further revised to require the notice to state that a
24 conservatorship registration is not effective if the conservatee relocates to
25 California. The staff should draft appropriate language for the next meeting and
26 flag it for the Commission to review.

27 Similar revisions should be made in proposed Probate Code Sections 2012
28 (registration of order appointing conservator of estate) and 2013 (registration of
29 order appointing conservator of person and estate).

30 **Proposed Prob. Code § 2014. Effect of Registration**

31 Proposed Probate Code Section 2014 and the corresponding Comment should
32 be revised along the following lines:

33 2014. (a) Upon registration of a conservatorship order from
34 another state, the conservator may, while the conservatee resides
35 out of this state, exercise in any county of this state all powers
36 authorized in the order of appointment except as prohibited under
37 the laws of this state, including maintaining actions and
38 proceedings in this state and, if the conservator is not a resident of
39 this state, subject to any conditions imposed upon nonresident
40 parties. The conservator is subject to the law of this state while
41 acting in this state, is required to comply with that law in every
42 respect, including, but not limited to, all applicable procedures, and
43 is not authorized to take any action prohibited by the law of this

1 state. If a law of this state, including, but not limited to, Section
2 2352, 2352.5, 2355, 2356.5, 2540, 2543, 2545, or 2591.5, or Article 2
3 (commencing with Section 1880) of Chapter 4 of Part 4, mandates
4 compliance with special requirements to exercise a particular
5 conservatorship power or take a particular step, the conservator of
6 a registered conservatorship may not exercise that power or take
7 that step without first complying with those special requirements.

8 (b) Subdivision (a) applies only when the conservatee resides
9 out of this state. When the conservatee resides in this state, a
10 conservator may not exercise any powers pursuant to a registration
11 under this article.

12 (c) A court of this state may grant any relief available under this
13 chapter and other law of this state to enforce a registered order.

14 **Comment.** Subdivision (a) of Section 2014 is similar to Section
15 403(a) of the Uniform Adult Guardianship and Protective
16 Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have
17 been made to conform to California terminology for the
18 proceedings in question. See Section 1982 & Comment (definitions);
19 see also Section 1980 Comment. Revisions have also been made to:

20 (1) Underscore that any conservatorship registered in
21 California is fully subject to California law while the
22 conservator is acting in the state. For example, if a
23 conservatorship is registered in California and the
24 conservator wishes to exercise the powers specified in
25 Section 2356.5 (conservatee with dementia) within the
26 state, the requirements of that section must be satisfied.
27 Similarly, if the conservator of a registered
28 conservatorship wishes to sell the conservatee’s personal
29 residence located in California, the transaction must
30 comply with California’s special requirements for such a
31 sale (see, e.g., Sections 2352, 2352.5, 2540(b), 2543, 2591.5).

32 (1) (2) Emphasize that registration of an out-of-state
33 conservatorship in one county is sufficient; it is not
34 necessary to register in every county in which the
35 conservator seeks to act.

36 (2) (3) Make clear that a registration is only effective
37 while the conservatee resides in another jurisdiction. If
38 the conservatee becomes a California resident, the
39 conservator cannot act pursuant to a registration under
40 Section 2011, 2012, or 2013, but can petition for transfer of
41 the conservatorship to California under Article 2.

42 Subdivision (b) further underscores that a registration is only
43 effective while the conservatee resides in another jurisdiction.

44 Subdivision (c) is the same as Section 403(b) of UAGPPJA.

45 For limitations on the scope of this chapter, see Section 1981 &
46 Comment.

1 **Conforming Revisions**

2 Proposed Probate Code Section 1851.1 should be revised as follows:

3 1851.1. (a) When a court ~~investigator is appointed pursuant to~~
4 issues an order provisionally granting a petition under Section
5 2002, the investigator appointed under Section 2002 shall promptly
6 commence an investigation of the transferred conservatorship
7 under this section.

8

9 (c) The court shall review the conservatorship as provided in
10 Section 2002. The conservatee shall attend the hearing unless the
11 conservatee's attendance is excused under Section 1825. ~~In~~
12 ~~conducting its review, the court shall make an express finding on~~
13 ~~whether continuation of the conservatorship is the least restrictive~~
14 ~~alternative needed for the protection of the conservatee.~~ The court
15 may take appropriate action in response to the court investigator's
16 report under this section.

17

18 (f) The first time that the need for a conservatorship is
19 challenged by any interested person or raised on the court's own
20 motion after a transfer under Section 2002, whether in a review
21 pursuant to this section or in a petition to terminate the
22 conservatorship under Chapter 3 (commencing with Section 1860),
23 the court shall presume that there is no need for a conservatorship.
24 This presumption is rebuttable, but can only be overcome by clear
25 and convincing evidence. The court shall make an express finding
26 on whether continuation of the conservatorship is the least
27 restrictive alternative needed for the protection of the conservatee.

28 **Preliminary Part**

29 The staff should add a new section to the preliminary part, which discusses
30 the cost implications of the proposed legislation. The discussion should
31 emphasize that (1) the proposed legislation will not add significant new costs to
32 the state budget, because the costs associated with transferring a conservatorship
33 to California or registering a conservatorship in California are likely to be less
34 than or equal to the costs of establishing a new conservatorship in California
35 under existing law, and (2) the proposed legislation is likely to result in
36 significant cost savings for the judiciary (as well as for conservatees and their
37 families), because it will ease the process of resolving conservatorship issues that
38 span state lines. The staff should flag the discussion for the Commission to
39 review at its next meeting.

1 **Tribal Issues**

2 The Commission began a discussion of the status of federally recognized
3 Indian tribes under UAGPPJA, but did not complete it. That discussion will be
4 continued at the Commission's December meeting. The next memorandum on
5 that topic will include an examination of the jurisdictional rules provided in the
6 Uniform Child Custody Jurisdiction and Enforcement Act (Fam. Code §§ 3400-
7 3465).

APPROVED AS SUBMITTED

Date

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

Chairperson

Executive Director