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
Hon. John H. Sugiyama, Probate and Mental Health Advisory Committee of the Judicial Council  
Alissa Van Nort  
John S. Warnlof  
Jennifer Wilkerson, Executive Committee, State Bar Trusts and Estates Section  
Nancy Neal Yeend  
Mariko Yoshihara, California Employment Lawyers Association

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MINUTES OF AUGUST 2, 2013, COMMISSION MEETING

The Commission approved the Minutes of the August 2, 2013, Commission meeting, as submitted by the staff.

ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

• There is no news yet on whether Commissioners Capozzola, Kihiczak, and Miller-O’Brien will be appointed to another term.

• The staff will continue and expand the practice of using footnotes in memoranda.

Meeting Schedule

The Commission considered Memorandum 2012-41, relating to the Commission’s 2014 meeting schedule. The Commission approved the following schedule:

<table>
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<tr>
<th>February 2014</th>
<th>Sacramento</th>
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<tr>
<td>Feb. 6 (Thur.)</td>
<td>10:00 am – 4:00 pm</td>
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<tr>
<th>April 2014</th>
<th>Sacramento</th>
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<tr>
<td>April 10 (Thur.)</td>
<td>10:00 am – 4:00 pm</td>
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LEGISLATIVE PROGRAM

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

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

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

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

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

For the December meeting, the staff should prepare a draft of a final recommendation, which incorporates the revisions described below, as well as
any necessary conforming changes to the preliminary part, proposed legislation, and Comments.

**Global Stylistic Revision**

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

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

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

1981. (a)(1) This chapter does not apply to a minor ....
(b) This chapter does not apply to any proceeding in which a person is involuntarily committed to a mental health facility or subjected to other involuntary mental health care ....
(c) Article 3 (commencing with Section 2001) does not apply to an adult with a developmental disability, or to any proceeding in which a person is appointed to provide personal care or property administration for an adult with a developmental disability ....
(d) Application of this chapter to a conservatee with dementia is subject to the express limitations of Sections 2002 and 2014, as well as the other requirements of this chapter.

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

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

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

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


Subdivisions (a) through (l) of proposed Probate Code Section 1982 should be left as in the Tentative Recommendation.
The Commission made no decision on whether to include federally recognized Indian tribes in the definition of “State” in subdivision (m) of proposed Probate Code Section 1982. See discussion of Tribal Issues, below.


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

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

1. The judicial system in the foreign country does not regularly provide impartial tribunals.
2. The judicial system in the foreign country does not regularly provide procedures compatible with the requirements of due process of law.
3. The specific proceeding in the foreign court was not conducted in an impartial tribunal.
4. The specific proceeding in the foreign court was not compatible with the requirements of due process of law.
5. An aspect of the foreign proceeding is repugnant to the public policy of this state or of the United States.
6. The circumstances of the foreign proceeding raise substantial doubt about the integrity of the foreign judicial system.


Proposed Probate Code Section 1985 should be revised as follows:

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

1. ….
2. (b) If a court of another state in which a conservatorship proceeding is pending requests assistance of the kind provided in subdivision (a), a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.
3. (c) Travel and other necessary and reasonable expenses incurred under subdivisions (a) and (b) may be assessed against the parties according to the law of this state.

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

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

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

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

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

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

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

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

(1) Permit an interested person, a court of this state, or a court of another state to raise the issue of appropriate
forum by a petition, motion, or request specifically directed to that issue, without filing a conservatorship proceeding in this state.

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

(3) Require a court to prepare a record ....

(4) Emphasize that in determining whether ....


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

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

The Comment should be revised as follows:

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

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

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


Proposed Probate Code Section 1998 should be revised as follows:

1998. If a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, in addition to complying with the notice requirements of this state, the petitioner shall give notice of the petition or of a hearing on the
petition must be given to those persons who would be entitled to notice of the petition or of a hearing on the petition if a proceeding were brought in the home state of the proposed conservatee. The notice must be given in the same manner as notice is required to be given in this state.

The Comment should be revised along the following lines:

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

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

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

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


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

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

The Comment should be revised as follows:

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

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


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

**Sequencing**

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

1. An out-of-state conservator files a transfer petition in the out-of-state court. If certain requirements are met, the court issues a provisional order granting the transfer.
2. The out-of-state conservator files a petition in a California court, asking that court to accept the proceeding.
3. The California court appoints a court investigator, who conducts an investigation and prepares a report.
4. The California court holds a hearing on the petition. If certain requirements are met, the California court issues a provisional order accepting the transfer.
5. The California court orders a further investigation of the conservatorship.
6. Not later than 60 days after issuing a provisional order accepting the transfer, the California court must determine whether the conservatorship will need to be modified to conform to California law. The court shall conduct a hearing on that matter.
7. Upon receiving the final order granting the transfer, the California court issues a final order accepting the proceeding and appointing a conservator.
8. After the California court issues a final order accepting the proceeding, the conservator must take an oath, file the required bond, and acknowledge receipt of certain information the court is required to provide. In general, the conservator cannot begin to function as such in California until all those steps occur and the clerk of the court issues the letters of conservatorship.

**Scope of Court Investigation**

The court investigation under proposed Section 2002 should be bifurcated. Some of the investigation should occur before the court decides whether to provisionally accept a transfer. That phase of the investigation should focus on the requirements for provisionally accepting a transfer.
Further investigation should occur after a court provisionally accepts a transfer. The full scope of the investigation should be as specified in proposed Probate Code Section 1851.1.

Content of a Petition to Accept a Transfer

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

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

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

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

Comment. Section 2002 is similar to .... Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA. Paragraph (3) Paragraphs (3) and (4) of subdivision (a) provide guidance on the content of a petition under this section. The first sentence of paragraph (3) serves to facilitate compliance with Section 1981 (scope of chapter).

....

Concurrent Petition for a Temporary Conservatorship

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

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

The Commission decided to add such a paragraph, but directed the staff to revise the first sentence to make clear that a petition for the appointment of a temporary conservator may be filed at any time; it need not be submitted along with a
transfer petition under proposed Section 2002. The staff should flag the revised
language for the Commission to review at its next meeting.

Notice Requirements

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

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

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

Appointment of Counsel

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

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

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

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

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

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

Hearing on Whether to Provisionally Accept a Transfer

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

Standard for Issuing an Order Provisionally Accepting a Transfer

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

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

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

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

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

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

Footnote 164 in the preliminary part should be revised as follows:
If the existing conservator was ineligible, under the law of the transferring state, to serve in California, the California court could not provisionally approve the transfer. See proposed Prob. Code § 2002(d)(2) & Comment infra. The court supervising the proceeding in the transferring state would have to replace the conservator before transferring the proceeding. Id.

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

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

Objections

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

When the Conservator Can Begin to Act in California

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

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

When in Rome Principle

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

(3) When a transfer to this state becomes effective, the conservatorship is subject to the law of this state and shall thereafter be treated as a conservatorship under the law of this state. If a law of this state, including, but not limited to, Section 2356.5, mandates compliance with special requirements to exercise
a particular conservatorship power or take a particular step, the
conservator of a transferred conservatorship may not exercise that
power or take that step without first complying with those special
requirements.

Responsibility for Conducting the Court Investigation

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

Hearing on Conformity Determination

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

Conservator

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

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

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

(1) The court supervising the conservatorship.

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

(3) Every person who would be entitled to notice of a petition
for the appointment of a conservator in this state.
Comment. Subdivision (a) of Section 2011 is similar to Section 401 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) (“UAGPPJA”). Revisions have been made to conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment. Revisions have also been made to expand and clarify the notice requirement (see subdivision (b)) and to clarify the proper filing procedure under California law. The reference to the “appointing court” has been replaced with a reference to the “court supervising the conservatorship,” because the court currently supervising a conservatorship might not be the same court that originally appointed the conservator. See Article 3 (transfer of conservatorship).

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

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

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

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


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

2014. (a) Upon registration of a conservatorship order from another state, the conservator may, while the conservatee resides out of this state, exercise in any county of this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintaining actions and proceedings in this state and, if the conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties. The conservator is subject to the law of this state while acting in this state, is required to comply with that law in every respect, including, but not limited to, all applicable procedures, and is not authorized to take any action prohibited by the law of this
state. If a law of this state, including, but not limited to, Section 2352, 2352.5, 2355, 2356.5, 2540, 2543, 2545, or 2591.5, or Article 2 (commencing with Section 1880) of Chapter 4 of Part 4, mandates compliance with special requirements to exercise a particular conservatorship power or take a particular step, the conservator of a registered conservatorship may not exercise that power or take that step without first complying with those special requirements.

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

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

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

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

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

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

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

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

For limitations on the scope of this chapter, see Section 1981 & Comment.
Conforming Revisions

Proposed Probate Code Section 1851.1 should be revised as follows:

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

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

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

Preliminary Part

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

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

☐ APPROVED AS SUBMITTED

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

__________________________ Date

__________________________ Chairperson

__________________________ Executive Director