A meeting of the California Law Revision Commission was held in Sacramento on February 6, 2014.

Commission:

Present: Damian Capozzola, Chairperson
        Victor King, Vice Chairperson
        Diane F. Boyer-Vine, Legislative Counsel
        Xochitl Carrion
        Susan Duncan Lee
        Crystal Miller-O’Brien

Absent: Judge Patricia Cowett (Ret.)
        Assembly Member Roger Dickinson
        Senator Ted Lieu
        Taras Kihiczak

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

Consultants: None

Other Persons:

Valerie Baumer
Laura Bennett, Verizon
Yolanda Benson, Government Strategies, Inc.
Blanca Castro, AARP
June Clark, Governor’s Office
Elizabeth Dietzen Olsen, Senate Office of Research
Claudine Desmond, Desmond & Desmond
Jerry Desmond, Desmond & Desmond
Jerry Desmond, Jr., Desmond & Desmond
Jim Ewert, California Newspaper Publishers Association
Daniel Felizzatto, Los Angeles District Attorney’s Office
Amelia Green, Stanford Law School
Lindsay Gullahorn, Capitol Advocacy
Ron Kelly
Jacqueline Kinney, Senate Committee on Energy, Utilities, and Communications
Janet Martinez, Stanford Law School
Michael Minkus, California Public Utilities Commission
Eugene Miyata, Los Angeles District Attorney’s Office
Robert Morgester, Office of the Attorney General
Bernie Orozco, California Cable & Telecommunications Association
Senator Alex Padilla
Erica Sanders, Office of Senator Ted Lieu
Valerie Small Navarro, American Civil Liberties Union
Mikki Bako Sorenson
Michelle Stephens, Daily Journal Corporation
John S. Warnlof

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MINUTES OF DECEMBER 13, 2013, COMMISSION MEETING

The Commission approved the Minutes of the December 13, 2013, Commission meeting, with the following corrections:

1. (1) On page 3, lines 13-15, inclusive, should be revised as follows:

   The Commission considered Memorandum 2013-54 and its First
   and Second Supplements, discussing the Commission’s current
   program of work and possible work priorities for 2013. The
   Commission also considered a letter from Glenn McRoberts of
   Michel & Associates, which is attached to the Third Supplement to
   Memorandum 2013-54. The Commission approved the priority
   scheme summarized on pages 51-54 of Memorandum 2013-54.

2. (2) On page 11, line 8, strike “2017” and insert “2107.”
ADMINISTRATIVE MATTERS

Report of Executive Director

The Executive Director reported on the following matters:

- Going forward, the staff will prepare a memorandum when presenting draft meeting minutes.
- Before posting any meeting recordings on the Commission’s website, the staff will research the requirements of the federal Rehabilitation Act, as it applies to California agencies. The staff will report its findings at the April 2014 meeting.
- The staff will start the formal process of revising the Commission’s Statement of Incompatible Activities at the beginning of the next fiscal year.
- The Governor’s budget would slightly increase the Commission’s budget. This would include an additional .5 authorized positions.
- The staff received informal advice from an attorney at the Fair Political Practices Commission that work as counsel or as a neutral in mediation does not present a disqualifying conflict of interest with regard to the Commission’s study of the Relationship Between Mediation Confidentiality and Attorney Malpractice and Other Misconduct.

Open Government Laws

The Commission considered Memorandum 2014-1, summarizing “open government” laws applicable to the Commission. The memorandum did not present any questions for decision. As a follow-up, the staff will confirm that the Commission’s current practices regarding the dissemination of material handed out at meetings complies with the requirements of the Bagley-Keene Open Meeting Act.

2014 LEGISLATIVE PROGRAM

The Commission considered Memorandum 2014-2 and its First Supplement, reporting on the Commission’s 2014 legislative program.

On behalf of AARP, Blanca Castro thanked the Commission for its work on the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”). She also informed the Commission that AARP plans to support Senate Bill 940 (Jackson), which would implement the Commission’s recommendation on the topic.
Regarding that bill, the Commission ratified the Chair’s decision to revise proposed Government Code Section 70663 as follows:

70663. (a) The fee for registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code is thirty dollars ($30). Subject to subdivision (b), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(b) From the operative date of this section to June 30, 2017, inclusive, ten dollars ($10) of each fee collected pursuant to subdivision (b) shall be used by the Judicial Council for the expenses of the Judicial Council in implementing and administering the civil representation pilot program under Section 68651.

The staff should take steps to ensure that the printed version of the Commission’s recommendation reflects this revision.

STUDY G-300 — STATE AND LOCAL AGENCY ACCESS TO CUSTOMER INFORMATION FROM COMMUNICATION SERVICES PROVIDERS

The Commission considered Memorandum 2014-5, introducing the study of State and Local Agency Access to Customer Information from Communication Services Providers. The Commission approved the approach described in the memorandum. In addition, the following disclosures and decisions were made:

• Commissioner Susan Duncan Lee disclosed that she had helped to prepare an opinion of the Attorney General relating to trap and trace devices. She does not see this as creating any conflict with regard to the study.

• Commissioner Victor King disclosed that he is an Information Privacy Officer and is a certified member of the International Association of Privacy Professionals. He does not see this as creating any conflict with regard to the study.

• The staff will contact the National Conference of Commissioners on Uniform State Laws to determine whether they are doing any work that relates to the study.

• If the study exposes any problems relating to civil discovery, those will be noted for possible future attention.

• The staff will attempt to locate sources of technical expertise that have no direct interest in the outcome of the study.

**STUDIES H-855 & H-856 — COMMON INTEREST DEVELOPMENT LAW**

The Commission considered Memorandum 2014-9 and its First, Second, and Third Supplements, discussing public comment on the Commission’s recent work on common interest development law. The Commission directed the staff to be cautious about responding to media commentary, evaluating each instance on a case-by-case basis.

**STUDY J-1314 — TRIAL COURT UNIFICATION: PUBLICATION OF LEGAL NOTICE**

The Commission considered Memorandum 2014-4 and its First Supplement, introducing a new study on publication of legal notice in judicial districts. In future written materials, the staff will explain that the current study will not address the use of Internet publication as an alternative to print publication. That issue is beyond the scope of the current study, which is focused on addressing laws made obsolete by trial court unification.

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

The Commission considered Memorandum 2014-6, presenting a preliminary analysis of policy considerations relevant to the intersection of mediation confidentiality and attorney misconduct. The memorandum did not present any questions for decision.

For the next meeting, the staff should begin to explore the Uniform Mediation Act and the law of other jurisdictions. For consideration in that regard, mediator Ron Kelly submitted a document entitled “Sample Summary of Significant Differences Between UMA and Current California Statutes.” See First Supplement to Memorandum 2014-6.
STUDY L-750 — UNIFORM ADULT GUARDIANSHIP AND
PROTECTIVE PROCEEDINGS JURISDICTION ACT

The Commission considered Memorandum 2014-3 and its First Supplement, discussing conforming revisions for its final recommendation on UAGPPJA.

The Commission approved the conforming revisions shown below. The staff should take steps to include those conforming revisions in (1) the printed version of the recommendation, and (2) the implementing legislation (SB 940 (Jackson)).

**Appealable Orders**

To provide guidance on the appealability of an order issued under the proposed law, a provision along the following lines should be added to the Probate Code:

```plaintext
Prob. Code § 1301.5 (added). Appeals under California Conservatorship Jurisdiction Act
1301.5. The following rules apply with respect to the California Conservatorship Jurisdiction Act, Chapter 8 (commencing with Section 1980) of Part 4:
  (a)(1) An appeal may be taken from an order assessing expenses against a party under Section 1997 if the amount exceeds five thousand dollars ($5,000).
  (2) An order under Section 1997 assessing expenses of five thousand dollars ($5,000) or less against a party may be reviewed on an appeal by that party after entry of a final judgment or an appealable order in the conservatorship proceeding. At the discretion of the court of appeal, that type of order may also be reviewed upon petition for an extraordinary writ.
  (b) An appeal may be taken from an order under Section 2001 denying a petition to transfer a conservatorship to another state.
  (c) An appeal may be taken from a final order under Section 2002 accepting a transfer and appointing a conservator in this state.
  (d) Notwithstanding any other law, an appeal may not be taken from either of the following until the court enters a final order under Section 2002 accepting the proposed transfer and appointing a conservator in this state:
     (1) An order under Section 2002 determining whether or how to conform a conservatorship to the law of this state.
     (2) An order that is made pursuant to a court review under Sections 1851.1 and 2002.

Comment. Section 1301 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).
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Paragraph (1) of subdivision (a) is modeled on Code of Civil Procedure Section 904.1(a)(12). Paragraph (2) is modeled on Code of Civil Procedure Section 904.1(b).

Subdivision (b) makes clear that an order *denying* a petition to transfer a conservatorship to another state is appealable. An order *provisionally granting* such a petition is not appealable. If a court issues a *final* order granting a transfer to another state, the court will terminate the conservatorship and enter a final judgment, which will be appealable. See Code Civ. Proc. § 904.1.

Subdivision (c) makes clear that a *final* order accepting a transfer of a conservatorship is appealable. See also Section 1301(a) (order granting letters of conservatorship is appealable). In contrast, an order *provisionally granting* a petition to transfer a conservatorship to California is not appealable. If a court *denies* such a petition, the California proceeding will be over and the court will enter an order of dismissal, which will be appealable. See Code Civ. Proc. §§ 581d, 904.1.

Subdivision (d) makes clear that a conformity determination under Section 2002 is not appealable until the court issues a final order accepting the transfer and appointing a California conservator. The same is true of an order that is made pursuant to a court review under Sections 1851.1 and 2002.

**Authority to File a Petition for Instructions or a Petition to Grant a Power or Authority (Prob. Code § 1455)**

Probate Code Section 1455 should be amended along the following lines:

**Prob. Code § 1455 (amended). Authority to file petition for instructions or petition to grant power or authority**

1455. Any petition for instructions or to grant a guardian or a conservator any power or authority under this division, which may be filed by a guardian or conservator, may also be filed by a person who petitions for the appointment of a guardian or conservator, including, but not limited to, a person who petitions under Section 2002 for transfer of a conservatorship.

**Comment.** Section 1455 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

**Conservatorship for an Absentee (Prob. Code §§ 1840-1844)**

Probate Code Sections 1840 to 1844 should be amended along the following lines:

**Prob. Code § 1840 (amended). Appointment of conservator for absentee**

1840. Except as otherwise provided in this article, a conservator for an absentee (Section 1403) shall be appointed as provided in
Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

**Comment.** Section 1840 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

**Prob. Code § 1841 (amended). Contents of petition relating to absentee**

1841. In addition to the other required contents of the petition, if the proposed conservatee is an absentee:

(a) The petition, and any notice required by Section 1822, Section 2002, or any other law, shall set forth the last known military rank or grade and the social security account number of the proposed conservatee.

(b) The petition shall state whether the absentee’s spouse has commenced any action or proceeding against the absentee for judicial or legal separation, dissolution of marriage, annulment, or adjudication of nullity of their marriage.

**Comment.** Section 1841 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

**Prob. Code § 1842 (amended). Notice requirements for petition relating to absentee**

1842. In addition to the persons and entities to whom notice of hearing is required under Section 1822 or 2002, if the proposed conservatee is an absentee, a copy of the petition and notice of the time and place of the hearing shall be mailed at least 15 days before the hearing to the secretary concerned or to the head of the United States department or agency concerned, as the case may be. In such case, notice shall also be published pursuant to Section 6061 of the Government Code in a newspaper of general circulation in the county in which the hearing will be held.

**Comment.** Section 1842 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

**Prob. Code § 1843 (amended). Notice requirements for petition relating to absentee**

1843. (a) No citation is required under Section 1823 to the proposed conservatee if the proposed conservatee is an absentee.

(b) No notice is required under Section 2002 to the proposed conservatee if the proposed conservatee is an absentee.

**Comment.** Section 1843 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

**Prob. Code § 1844 (amended). Proof of inability to attend hearing**

1844. (a) In a proceeding to appoint a conservator for an absentee under Article 3 (commencing with Section 1820) of this
chapter or Article 3 (commencing with Section 2001) of Chapter 8, an official written report or record complying with Section 1283 of the Evidence Code that a proposed conservatee is an absentee shall be received as evidence of that fact and the court shall not determine the status of the proposed conservatee inconsistent with the status determined as shown by the written report or record.

(b) The inability of the proposed conservatee to attend the hearing is established by the official written report or record referred to in subdivision (a).

Comment. Section 1844 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Conservatorship for a Missing Person (Prob. Code §§ 1845-1849)

Probate Code Sections 1845 to 1849 should be amended along the following lines:

Prob. Code § 1845 (amended). Appointment of conservator for missing person
1845. (a) Except as otherwise provided in this article, a conservator of the estate of a person who is missing and whose whereabouts is unknown shall be appointed as provided in Article 3 (commencing with Section 1820) of this chapter or Article 3 (commencing with Section 2001) of Chapter 8.

(b) This article does not apply where the proposed conservatee is an absentee as defined in Section 1403.

Comment. Section 1845 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Prob. Code § 1846 (amended). Contents of petition relating to missing person
1846. In addition to the other required contents of the petition, if the proposed conservatee is a person who is missing and whose whereabouts is unknown, the petition shall state all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the petition states that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.

(b) The time and circumstance of the person’s disappearance and that the missing person has not been heard from by the persons most likely to hear (naming them and their relationship to the missing person) since the time of disappearance and that the
whereabouts of the missing person is unknown to those persons
and to the petitioner.

   (c) The last known residence of the missing person.
   (d) A description of any search or inquiry made concerning the
whereabouts of the missing person.
   (e) A description of the estate of the proposed conservatee
which requires attention, supervision, and care.

Comment. Section 1846 is amended to reflect the enactment of
the California Conservatorship Jurisdiction Act (Section 1980 et
seq.).

Prob. Code § 1847 (amended). Notice requirements for petition
relating to missing person

1847. In addition to the persons and entities to whom notice of
hearing is required under Section 1822 or Section 2002, if the
proposed conservatee is a person who is missing and whose
whereabouts is unknown:

   (a) A copy of the petition for appointment of a conservator and
notice of the time and place of the hearing on the petition shall be
mailed at least 15 days before the hearing to the proposed
conservatee at the last known address of the proposed conservatee.
   (b) Notice of the time and place of the hearing shall also be
published pursuant to Section 6061 of the Government Code in a
newspaper of general circulation in the county in which the
proposed conservatee was last known to reside if the proposed
conservatee’s last known address is in this state.
   (c) Pursuant to Section 1202, the court may require that further
or additional notice of the hearing be given.

Comment. Section 1847 is amended to reflect the enactment of
the California Conservatorship Jurisdiction Act (Section 1980 et
seq.).

appoint conservator for missing person

1848. (a) In a proceeding under Article 3 (commencing with
Section 1820) to appoint a conservator of the estate of a person who
is missing and whose whereabouts is unknown, the following acts
are not required:

   (a) (1) Issuance of a citation to the proposed conservatee
pursuant to Section 1823.
   (b) (2) Service of a citation and petition pursuant to Section 1824.
   (c) (3) Production of the proposed conservatee at the hearing
pursuant to Section 1825.
   (d) (4) Performance of the duties of the court investigator
pursuant to Section 1826.
   (e) (5) Performance of any other act that depends upon
knowledge of the location of the proposed conservatee.
(b) In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, the following acts are not required:

1. Notice to the proposed conservatee pursuant to Section 2002.
2. Production of the proposed conservatee at the hearings pursuant to Section 2002.
3. Performance of the duties of the court investigator pursuant to Section 1851.1.
4. Performance of any other act that depends upon knowledge of the location of the proposed conservatee.

Comment. Section 1848 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Prob. Code § 1849 (amended). Required findings for appointment of conservator for missing person

1849. A conservator of the estate of a person who is missing and whose whereabouts is unknown may be appointed only if the court finds all of the following:

(a) The proposed conservatee owns or is entitled to the possession of real or personal property located in this state. In a proceeding to transfer a conservatorship of a missing person to this state under Article 3 (commencing with Section 2001) of Chapter 8, this requirement is also satisfied if the court finds that the proposed conservatee owns or is entitled to the possession of personal property that is to be relocated to this state upon approval of the transfer.

(b) The proposed conservatee remains missing and his or her whereabouts remains unknown.

(c) The estate of the proposed conservatee requires attention, supervision, and care.

Comment. Section 1849 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Order Regarding Conservatee’s Capacity to Give Informed Consent to Medical Treatment (Prob. Code § 1890)

Probate Code Section 1890 should be amended along the following lines:

Prob. Code § 1890 (amended). Rules relating to court order under Section 1880

1890. (a) An order of the court under Section 1880 may be included in the order of appointment of the conservator if the order was requested in the petition for the appointment of the conservator or the transfer petition under Section 2002 or, except in the case of a limited conservator, may be made subsequently upon a petition made, noticed, and heard by the court in the manner provided in this article.
(b) In the case of a petition filed under this chapter requesting that the court make an order under this chapter or that the court modify or revoke an order made under this chapter, when the order applies to a limited conservatee, the order may only be made upon a petition made, noticed, and heard by the court in the manner provided by Article 3 (commencing with Section 1820) of Chapter 1.

(c) No court order under Section 1880, whether issued as part of an order granting the original petition for appointment of a conservator or issued subsequent thereto, may be granted unless supported by a declaration, filed at or before the hearing on the request, executed by a licensed physician, or a licensed psychologist within the scope of his or her licensure, and stating that the proposed conservatee or the conservatee, as the case may be, lacks the capacity to give an informed consent for any form of medical treatment and the reasons therefor. Nothing in this section shall be construed to expand the scope of practice of psychologists as set forth in the Business and Professions Code.

Comment. Subdivision (a) of Section 1890 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

Proper Court for Seeking Approval of Compromise of Claim or Extension, Renewal, or Modification of Obligation (Prob. Code § 2505)

Probate Code Section 2505 should be amended along the following lines:

Prob. Code § 2505 (amended). Proper forum for seeking court approval

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) Subdivisions (a), (b), and (c) do not apply to a conservatorship that is registered in this state pursuant to Article 4 (commencing with Section 2011) of Chapter 8 of Part 3.

(2) Except as provided in paragraph (3), 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.

(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.

Comment. Section 2505 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 et seq.).

STUDY R-100 — FISH AND GAME LAW

The Commission considered Memorandum 2014-7, and Memorandum 2014-8 and its First Supplement, discussing the Commission’s study of fish and game law. The Commission approved all of the staff proposals in Memorandum 2014-7 and Memorandum 2014-8. The Commission also made the following decisions:

- Proposed Fish and Wildlife Code Section 5505(a) should be revised to replace the word “effective” with “operative.”
- Where appropriate, the staff may prepare separate recommendations proposing the enactment of specific reforms in existing provisions, rather than waiting to enact them as part of a complete Fish and Wildlife Code.