Study L-750 April 3, 2013

Memorandum 2013-15

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Draft Tentative Recommendation)

In its study of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"), the Commission has been working towards issuance of a tentative recommendation. In February, the Commission considered a discussion draft and instructed the staff to make various revisions. A redraft of the proposed legislation, incorporating the decisions made in February, is attached for the Commission's consideration. The staff is still working on the preliminary part (narrative explanation), and will provide it in a supplement to this memorandum.

Commissioners and other interested persons should review the attached draft and assess whether any further revisions are needed. A number of issues are presented below. The following materials are attached as Exhibits and referred to in the discussion below:

The Commission should **resolve the issues that are discussed in this memorandum and any other points that interested persons raise or that otherwise come to its attention.** Upon resolving those matters, the Commission might be ready to approve a tentative recommendation (with or without revisions), to be posted to the Commission's website and circulated for comment. However, **the staff recommends that the Commission wait until the June meeting to take that step,** so that (1) we can still present some information on UAGPPJA adjustments made in other jurisdictions and conservatorship practices

Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website (www.clrc.ca.gov). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

used in other jurisdictions, (2) we can do further research on conforming revisions that may be necessary, (3) we can improve the preliminary part, and (4) there will be more time for refinement of the draft and stakeholder input before it is widely circulated for comment.

Unless otherwise indicated, all statutory references in this memorandum are to the Probate Code.

ADULT WITH A DEVELOPMENTAL DISABILITY (PROPOSED SECTION 1981(C))

In the discussion draft that the staff prepared for the February meeting, the proposed UAGPPJA legislation was entirely inapplicable to an adult with a developmental disability. See Memorandum 2013-9, Attachment pp. 3-6. The proposed Comment explained:

> [T]his chapter does not apply to an adult with a developmental disability. Under California law, such an adult is entitled to be evaluated by a regional center and to receive a broad range of services pursuant to an individualized plan. To further that intent, California provides a variety of conservatorship possibilities for an adult with a developmental disability …. With regard to action taken under the jurisdiction of this state, the exemption provided by this paragraph serves to ensure that each adult with a developmental disability receives the benefit of California's procedures for such adults, and full recognition of the rights to which the adult is entitled under California law.

Id. at Attachment p. 4 (citations omitted).

A Staff Note pointed out that this reasoning was forceful in the context of UAGPPJA's transfer procedure (Article 3), but "less forceful with regard to UAGPPJA's registration process (Article 4), under which an out-of-state conservatorship could be registered in California and California courts and other entities would be required to recognize the out-of-state conservator's authority to make decisions for the conservatee." *Id.* at Attachment p. 5. After noting that the Commission had already decided to preclude conservators of California residents from using the registration procedure, the staff explained that "we are dealing with a situation in which the adult with a developmental disability *is not a California resident* and probably will not be in a position to participate in California's programs for such adults." *Id.* (emphasis added). The staff described

several pros and cons of allowing use of the registration procedure under those circumstances. *Id.* at Attachment pp. 4-5.

At the February meeting, the Commission considered those pros and cons and instructed the staff to revise the draft "so that the registration process (Article 4) applies to a proceeding relating to an adult with a developmental disability." Draft Minutes (Feb. 2013), p. 5. The Commission further decided that the tentative recommendation "should specifically solicit comments on the merits of this approach, and on whether any other aspect of UAGPPJA should apply to an adult with a developmental disability." *Id.*

The attached draft would implement those decisions: The registration procedure would apply to a conservatorship of an adult with a developmental disability, the transfer procedure would not apply, and a "Note" would solicit comments on which aspects of UAGPPJA should apply to such a conservatorship. See proposed Section 1981.

In preparing the draft, however, the staff had to resolve three related points that the Commission did not discuss in February. Specifically, if UAGPPJA's registration procedure (Article 4) applies to a conservatorship of an adult with a developmental disability,

- Should UAGPPJA's general provisions (Article 1) also apply?
- Should UAGPPJA's jurisdictional rules (Article 2) apply?
- Should UAGPPJA's miscellaneous provisions (Article 5) apply?

The staff readily concluded that it would not make sense to apply the registration procedure without also applying general provisions such as the definitions in Article 1, and miscellaneous provisions such as the transitional provision in Article 5. With regard to the jurisdictional rules in Article 2, the proper treatment is less obvious. Our preliminary inclination is to make them applicable to a conservatorship of an adult with a developmental disability. We do not see any potential harm in providing such jurisdictional guidance, and the rules might be helpful in preventing and resolving jurisdictional disputes.

Thus, proposed Section 1981(c), limiting the scope of the proposed legislation, would only refer to the transfer procedure: "*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 …." (Emphasis added.) The Comment would explain:

> Subdivision (c) makes clear that the transfer procedure provided in Article 3 of this chapter (Sections 2001-2002) does not apply to an adult with a developmental disability. Consistent with that rule, subdivision (c) also states that the transfer procedure is inapplicable to several types of proceedings specifically designed for such an adult.
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> Under California law, an adult with a developmental disability is entitled to be evaluated by a regional center and to receive a broad range of services pursuant to an individualized plan. See Welf. & Inst. Code § 4646; see also Sanchez v. Johnson, 416 F.3d 1051, 1064-68 (9th Cir. 2001). The intent is to "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 ("Services for the Developmentally Disabled"). To further that intent, California provides a variety of conservatorship possibilities for an adult with a developmental disability, including the option of a limited conservatorship in which the adult "retain[s] all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator." Section 1801(d); *cf.* Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).
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> By precluding use of Article 3's streamlined transfer procedure, subdivision (c) serves to ensure that when an adult with a developmental disability is relocated to California, that adult will receive the benefit of California's procedures for such adults, and full recognition of the rights to which the adult is entitled under California law. Likewise, subdivision (c) helps assure that when such an adult is relocated from California to another jurisdiction, that jurisdiction will have to evaluate the adult's needs and the available resources using its normal processes, not an abbreviated transfer procedure.

The rest of the proposed legislation (Articles 1, 2, 4, and 5) would apply to a conservatorship of an adult with a developmental disability.

Does the Commission agree with this approach?

FEDERALLY RECOGNIZED INDIAN TRIBE
(PROPOSED SECTION 1982(M))

At the December and February meetings, the Commission extensively discussed UAGPPJA's definition of "State," which includes "a federally

recognized Indian tribe" and various other non-state entities. See Minutes (Dec. 2012), p. 4; Minutes (Feb. 2013), p. 5; see also Memorandum 2013-8. After determining that all of those non-state entities are subject to federal due process protections or analogous protections, the Commission decided to use the UAGPPJA definition in drafting its proposed legislation. Minutes (Feb. 2013), p. 5. Thus, proposed Section 1982(m) would read:

> (m) Notwithstanding Section 74, "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Since the December meeting, the staff has received several communications about this definition from Douglas Miller, a Senior Attorney with the Legal Services Office of the Administrative Office of the Courts ("AOC"). Although Mr. Miller staffs the Probate and Mental Health Advisory Committee of the Judicial Council, his communications do not reflect the views of that committee, the AOC, the Judicial Council, or any other entity or group. Rather, Mr. Miller speaks solely for himself as an individual.

In his communications, Mr. Miller has raised numerous questions about how UAGPPJA would apply to Indian tribes, particularly ones that are located within California:

> As I understand UAGPPJA, a conservator appointed in a California tribal proceeding for a conservatee who lives on tribal land could register an appointment order and thereby establish authority to act throughout the state respecting not only the conservatee's personal property, but also estate real property located in the state but not within the reservation or other tribal area, *whether or not the tribe had adopted UAGPPJA.* These provisions suggest that such a conservator would be treated as a non-resident of California even though he or she actually lives within the state, but within tribal land. (But what if the conservator lived outside of tribal land in California but the conservatee lived on that land?) Concerning estate conservatorships here, has any work been done to determine whether California tribal conservators could become adequately bonded?
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> What would be the requirements if a tribe-appointed conservator moved his or her conservatee from tribal land down the street to a nursing home in the same county but not within tribal land? Would that move require the transfer process, and thus both the tribe and the state would have had to adopt UAGPPJA? Suppose the placement is regretted and the conservator moves the

> conservatee back onto tribal land[.] Would another transfer order be required?

Email from D. Miller to B. Gaal (3/7/13) (emphasis in original). Mr. Miller has also asked whether the Uniform Law Commission ("ULC") or anyone is "keeping track of Indian tribes that have adopted [UAGPPJA], if any, and, if so, how their adoption actions are to be identified, established, and publicized?" Email from D. Miller to B. Gaal (2/21/13).

These are good questions. With regard to the last one, the staff contacted Ben Orzeske, a Legislative Counsel with the ULC. Mr. Orzeske is the new Staff Liaison for UAGPPJA, because Eric Fish recently left the ULC to work for another organization. Mr. Orzeske informed us that

> [t]he ULC does not know of any tribes that have enacted UAGPPJA, and there is no centralized database for tribal enactments of uniform acts. Even for our projects developed jointly with Native American groups (such as the Model Tribal Secured Transactions Act), to the extent we know of enactments it was all learned informally.

Email from B. Orzeske to B. Gaal (3/20/13).

With regard to Mr. Miller's remaining questions, they deserve careful consideration. For several reasons, however, this might not be the best time for that.

First, a pending bill (SB 406 (Evans)) would enact the Tribal Court Civil Judgment Act. According to the author,

> SB 406 simplifies and streamlines the process by which California courts recognize and enforce tribal court judgments without altering any rights under current law. In doing so, the bill makes the enforcement of these rights more efficient and economical for both litigants and the courts.

See SB 406 Fact Sheet, attached as Exhibit p. 4. This bill is the result of a Judicial Council study that involved extensive stakeholder participation and preparation of a lengthy report. See http://www.courts.ca.gov/documents/jc-20121214-itemG.pdf (hereafter, "Judicial Council Report"). The staff is monitoring the bill's progress through the Legislature, so that we can learn from it and the Commission can take those lessons into account in its work on UAGPPJA.

Importantly, however, the Tribal Court Civil Judgment Act proposed in SB 406 would not address tribal court judgments "[f]or decedent's estates, guardianships, conservatorships, internal affairs of trusts, powers of attorney, or

other tribal court judgments that arise in proceedings that are or would be governed by the Probate Code." See proposed Code Civ. Proc. § 1731(b)(4) in SB 406, as introduced. Rather, the Probate and Mental Health Advisory Committee is currently working with the California Tribal Court/State Court Forum on recognition of tribal judgments and orders in such proceedings. See Judicial Council Report at p. 4, n. 4.

The California Tribal Court/State Court Forum is a coalition consisting of tribal court judges, state court judges, the Chairs of certain Judicial Council advisory committees, the director of Native American Affairs for the State Attorney General's Office, and the Tribal Advisor to Governor Brown. Mr. Miller recently alerted this group to the existence of UAGPPJA, and it has begun to study that topic in conjunction with the Probate and Mental Health Advisory Committee:

> We (representatives of both the Probate and Mental Health Advisory Committee and the Tribal Court and State Court Forum) have recently met to begin the study of UAGPPJA and its impact on Indian tribes and tribal courts in this state. That meeting was very preliminary. More joint meetings of representatives in these groups will take place this spring. If common ground on these issues can be arrived at, they would be transmitted to the Judicial Council with recommendations to the council for its position on the Commission's recommendations concerning the uniform law or, depending on when those recommendations are made, on any legislation that may come from them. It is also possible that the probate committee and the Forum may not reach agreement on all of these issues. What the council might do in that situation cannot be easily predicted. We will work towards a consensus if that is possible.

Email from D. Miller to B. Gaal (3/19/13).

Mr. Miller has suggested "that any recommendation the CLRC makes in 2014 for adoption of UAGPPJA could *defer the tribal issue for further study* even though the rest of the law could be supported and recommended next year." Email from D. Miller to B. Gaal (3/7/13) (emphasis added). Given the pendency of SB 406, as well as the ongoing work of the California Tribal Court/State Court Forum and the Probate and Mental Health Advisory Committee, **that approach would make sense.** The Commission has already tentatively decided that the UAGPPJA legislation should have a delayed operative date, to allow the Judicial Council to develop rules and forms. See Draft Minutes (Feb. 2013), p. 7. **Perhaps the tribal**

issues could be resolved and addressed during the transitional year, after UAGPPJA is enacted but before it becomes operative.

If the Commission is interested in that approach, the staff recommends two adjustments to the attached draft of a tentative recommendation. First, **the reference to "a federally recognized Indian tribe" in proposed Section 1982(m) should be placed in brackets:**

> (m) Notwithstanding Section 74, "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, [a federally recognized Indian tribe], or any territory or insular possession subject to the jurisdiction of the United States.

Second, **a "Note" on proposed Section 1982 should be inserted, along the following lines:**

> ☞ **Note.** The Commission seeks comment on any aspect of proposed Section 1982, but would especially appreciate input on whether to include a federally recognized Indian tribe in the definition of "State" and, if not, what alternative treatment would be appropriate.
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> The Commission is aware of Senate Bill 406 (Evans), which would enact the Tribal Court Civil Judgment Act. The Commission is also aware that the California Tribal Court/State Court Forum and the Probate and Mental Health Advisory Committee of the Judicial Council are jointly studying recognition of tribal judgments and orders in proceedings that would, if conducted in a California court, be brought in the Probate Division.
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> The Commission's tentative inclination is to postpone decision on whether to include a federally recognized Indian tribe in the definition of "State." Once the fate of SB 406 is decided and the joint study is complete (or at least well underway), it might be easier to decide how to proceed on this point.
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> In addition, the Commission has tentatively decided that the UAGPPJA legislation should have a delayed operative date, to allow the Judicial Council to develop rules and forms. See proposed Section 2114. It might be possible to resolve and address the tribal issues during the transitional year, after UAGPPJA is enacted but before it becomes operative.
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> For these reasons, the reference to "a federally recognized Indian tribe" is shown in brackets in proposed Section 1982(m). The Commission encourages comments on these matters.

Would the Commission like to take these steps?

COMMUNICATION AND COOPERATION BETWEEN COURTS (PROPOSED SECTIONS 1984 & 1985)

Proposed Section 1984 would authorize a California court to communicate with a court in another state concerning a conservatorship proceeding. Similarly, proposed Section 1985 would authorize cooperation between courts: A California court could request that a court in another state take certain steps (e.g., holding an evidentiary hearing), and a California court could grant, or make reasonable efforts to comply with, such a request from a court in another state.

Both of these sections are modeled on provisions of the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which has been enacted in California. See Family Code Sections 3410 (communication between courts) and 3412 (cooperation between courts), which are similar to Sections 110 and 112 of the UCCJEA, respectively.

In February, the staff raised practical questions about how proposed Sections 1984 and 1985 would function. Would it be necessary to create a court file if one did not already exist? Would any fees be charged for court services provided pursuant to those provisions? If so, what fees would apply?

After discussing those points, the Commission decided that its tentative recommendation "should specifically solicit comment on whether to charge fees for the court services described in proposed Probate Code Sections 1984 and 1985, and, if so, what fees to charge. Draft Minutes (Feb. 2013), p. 5. The attached draft would implement that decision by including a "Note" after proposed Section 1984 and a similar "Note" after proposed Section 1985.

Shortly after the February meeting, Douglas Miller of the AOC alerted the staff to two new provisions pertaining to communication and cooperation between courts:

> For your analysis of proposed section 1984, Communications Between Courts, you may want to look at and refer to a new provision concerning communications between California courts on guardianship venue when there were prior family law custody matters involving the proposed minor ward, Prob. Code section 2204, added in 2012, and new California Rule of Court, rule [7.1014], adopted effective January 1, 2013. Section 2204 and the rule were modeled after the inter-court communication provisions of the UCCJEA, as is proposed section 1984, but the court rule provides considerably more detail concerning communications between courts that might be of use and interest.

Email from D. Miller to B. Gaal (2/21/13). For ease of reference, the new provisions he identifies — Section 2204 and Rule of Court 7.1014 — are attached as Exhibit pp. 1-3.

As Mr. Miller points out, the court rule provides much more detail concerning inter-court communications than the new statute. That makes sense, because the judiciary is perhaps in a better position than the Legislature to assess how courts should communicate about the matters in question. The staff suggests that the Commission take the same approach here, **leaving it to the judiciary to develop a court rule, if necessary, that would specify the details regarding court communication and cooperation under proposed Sections 1984 and 1985.**

However, the Legislature has maintained control over filing fees charged by the courts. See Gov't Code §§ 70600-70678 (Uniform Civil Fees & Standard Fee Schedule Act). Thus, any fees for the court services described in proposed Probate Code Sections 1984 and 1985 should be clearly specified by statute. For this reason, **the "Notes" soliciting comments on such fees appear advisable and should be retained.**

EXCLUSIVE JURISDICTION
[PROPOSED SECTION 1992]

Under Section 202 of UAGPPJA, the article governing jurisdiction (Article 2) is the *exclusive jurisdictional basis* for a court to appoint a person to help an adult with personal care or property administration:

> **Section 202. Exclusive Basis.** This [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult.

The accompanying ULC Comment explains:

> Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a guardian or issue a protective order for an adult. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in guardianship and protective proceedings cases. A Legislative Note to Section 503 provides guidance on which provisions need to be repealed or amended. The drafters of this Act concluded that limiting the Act to "interstate" cases was

> unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state's existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

In the attached draft, the corresponding provision is proposed Section 1992. It is similar to UAGPPJA Section 202, but it uses California terminology and it makes clear that the provision only addresses which state's courts have jurisdiction to appoint a conservator, not other jurisdictional issues (e.g., whether an appellate court may make such an appointment).

As currently drafted, proposed Section 1992 and the accompanying Comment would provide:

> **§ 1992. Exclusive basis [UAGPPJA § 202]**
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> 1992. For a conservatorship proceeding governed by this article, this article provides the exclusive basis for determining whether the courts of this state, as opposed to the courts of another state, have jurisdiction to appoint a conservator of the person, a conservator of the estate, or a conservator of the person and estate.
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> **Comment.** Section 1992 is similar to Section 202 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to:
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> (1) Conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.
>
> (2) Make clear that this article only focuses on which state's courts have jurisdiction to appoint a conservator. The article does not address other jurisdictional issues, such as whether an appellate court may make such an appointment.
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> For limitations on the scope of this chapter, see Section 1981 & Comment.

The version of proposed Section 1992 presented in February was similar (the new version just incorporates some minor adjustments to conform to Commission decisions regarding other aspects of the proposal). See Memorandum 2013-9, Attachment pp. 18-19.

The staff interprets proposed Section 1992 to mean that for a conservatorship proceeding governed by Article 2, the jurisdictional rules stated in that article are the only basis upon which a California court, as opposed to a court of another state, could exercise jurisdiction. Those jurisdictional rules, invoking the concepts of "home state" and "significant-connection state," would apply regardless of

whether the conservatorship proceeding originates in California or in another state.

So long as every other state enacts the same jurisdictional rules, the staff does not see any problem with this "exclusive jurisdiction" approach. The jurisdictional rules provided in UAGPPJA seem reasonable, because they are based on the strength of a proposed conservatee's ties to a particular forum. As long as all states with ties to a proposed conservatee apply those rules, there will be no jurisdictional gaps and the rules should yield a good result.

The staff wonders, however, whether the "exclusive jurisdiction" approach will always provide a good result if a proposed conservatee only has ties to (1) California and (2) a state that has not enacted UAGPPJA. In that circumstance, could a proposed conservatee wind up without a forum, or with a forum that would be less appropriate than California?

We are not sure how to handle this, but we thought it important to at least raise the question. **We will attempt to obtain input on this point from ULC representatives before the Commission meets.**

A somewhat related question pertains to the location of proposed Section 1982 and the other UAGPPJA jurisdictional provisions. In the attached draft, they would be in an article entitled "Jurisdiction," which would be located with the rest of UAGPPJA in a new chapter ("Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act") of Part 2 ("Conservatorship") of Division 4 ("Guardianship, Conservatorship, and Other Protective Proceedings") of the Probate Code. As explained above, however, proposed Section 1982 appears to mean that the UAGPPJA jurisdictional provisions are the only basis upon which a California court, as opposed to a court of another state, could exercise jurisdiction. In other words, those provisions would govern the proper jurisdiction of a conservatorship proceeding, regardless of whether a party is invoking the transfer procedures of UAGPPJA, or is seeking to establish a conservatorship in California from scratch.

Because the jurisdictional provisions would have this impact, **it might be helpful to include a "signpost provision"** in Chapter 4 ("Jurisdiction and Venue") of Part 4 ("Provisions Common to Guardianship and Conservatorship") of Division 4 of the Probate Code. This step would serve to alert people to the existence of those provisions, which might otherwise be overlooked when a conservatorship is being initiated in California. If the Commission is interested in

this idea, **it could be implemented by amending Section 2200 along the following lines:**

> **§ 2200 (amended). Jurisdiction**
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> 2200. (a) The superior court has jurisdiction of guardianship and conservatorship proceedings.
>
> (b) Chapter 8 (commencing with Section 1980) of Part 3 governs which state has jurisdiction of a conservatorship proceeding.
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> **Comment.** Section 2200 is amended to direct attention to the jurisdictional provisions in the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

DECLINING TO EXERCISE JURISDICTION
[PROPOSED SECTIONS 1993, 1996 & 1997]

In a number of places, UAGPPJA refers to a court that "declines to exercise jurisdiction." In particular, proposed Section 1993(c) in the attached draft (corresponding to UAGPPJA § 203(2)(A), cl. 2) would refer to a court that has declined to exercise jurisdiction "because this state is a more appropriate forum":

> (c) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if, on the date the petition is filed, this state is a significant-connection state and *a court of the proposed conservatee's home state has declined to exercise jurisdiction because this state is a more appropriate forum.*

(Emphasis added.) Similarly, proposed Section 1993(e) in the attached draft (corresponding to UAGPPJA § 203(3)) would state:

> (e) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if all of the following conditions are satisfied:
>
> (1) This state does not have jurisdiction under subdivision (a), (b), (c), or (d).
>
> (2) *The proposed conservatee's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum.*
>
> (3) Jurisdiction in this state is consistent with the constitutions of this state and the United States.

(Emphasis added.)

Proposed Section 1997(a)(1) (corresponding to UAGPPJA § 207(a)(1)) would allow a court to "[d]ecline to exercise jurisdiction" on a different ground. Specifically, the section would allow a court to take that step if it "determines

that it acquired jurisdiction to appoint a conservator because of unjustifiable conduct."

Finally, proposed Section 1996 (corresponding to UAGPPJA § 206) would provide guidance on when and how a court may decline to exercise its jurisdiction on the ground that a court in another state is a more appropriate forum:

> **§ 1996. Appropriate forum [UAGPPJA § 206]**
>
> 1996. (a) 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.
>
> (b) *If a court of this state declines to exercise its jurisdiction under subdivision (a), it shall either dismiss or stay the proceeding.* 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.
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> (c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including all of the following:
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> (1) Any expressed preference of the proposed conservatee.
>
> (2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.
>
> (3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.
>
> (4) The distance of the proposed conservatee from the court in each state.
>
> (5) The financial circumstances of the estate of the proposed conservatee.
>
> (6) The nature and location of the evidence.
>
> (7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.
>
> (8) The familiarity of the court of each state with the facts and issues in the proceeding.
>
> (9) If an appointment were made, the court's ability to monitor the conduct of the conservator.

(Emphasis added.)

In February, representatives of the Executive Committee of the State Bar Trusts and Estate Section ("TEXCOM") raised concern regarding how a court would communicate an intention to "decline to exercise jurisdiction." See Memorandum 2013-9, Exhibit p. 2; see also *id.* at Attachment p. 22. The Commission discussed this point at length, and ultimately directed the staff to

"seek information from ULC representatives regarding how a court would 'decline to exercise jurisdiction' under UAGPPJA and how another court would determine whether this has occurred." Draft Minutes (Feb. 2013), p. 6. The Commission decided to wait until it had such information before determining how to handle the matter in its proposal. *Id.*

In discussing this point, the Commission identified two apparently conflicting considerations:

- **The need for a clear and easy way for a court to determine whether another state has declined jurisdiction.** UAGPPJA contemplates that a court will be able to tell whether another state has declined jurisdiction. But how could a court do this? Unless a court in the other state has issued an order to that effect, it would seem to be difficult.
- **The interest in minimizing litigation burdens on proposed conservatees, their friends, and their families.** If a conservatorship proceeding had to be commenced in each potential jurisdiction and a court order had to be issued each time a state declined to exercise jurisdiction, that could be unduly burdensome and contrary to the spirit of UAGPPJA, which is designed to ease burdens on parties to conservatorship proceedings.

The Commission was not sure how to resolve this tension.

After the February meeting, the staff discussed the matter by phone with Ben Orzeske of the ULC. Mr. Orzeske explained that under UAGPPJA, the step of declining jurisdiction necessarily requires an affirmative act — i.e., the issuance of a court order. He was firm about that point, emphasizing that UAGPPJA Section 206(b) (corresponding to proposed Section 1996(b)) expressly says that when a court declines to exercise its jurisdiction on the ground that a court of another state is a more appropriate forum, "it shall either dismiss or stay the proceeding."

Upon hearing Mr. Orzeske express that point so emphatically, and carefully reviewing the text of UAGPPJA with it in mind, the staff gained a better understanding of how UAGPPJA's jurisdictional scheme is supposed to work. There appear to be only two situations in which a court would need to examine whether another court has "declined to exercise jurisdiction because this state is a more appropriate forum."

First, to exercise jurisdiction under proposed Section 1993(c) (corresponding to UAGPPJA § 203(2)(A), cl. 2), a court in a significant-connection state would

have to find that a court of the proposed conservatee's home state has "declined to exercise jurisdiction because this state is a more appropriate forum." That rule makes perfect sense. A proposed conservatee has stronger ties to the home state than to a significant-connection state, so a significant-connection state should not exercise jurisdiction unless the home state has declined to do so.

Notably, this UAGPPJA provision *does not* require a court in a significant-connection state to find that every other significant-connection state has "declined to exercise jurisdiction because this state is a more appropriate forum." Requiring such a finding would be unduly burdensome; depending on how many states are involved, it could be very costly for parties to have to initiate a conservatorship proceeding in each significant-connection state (plus the home state, if any) and obtain a court order declining to exercise jurisdiction from all but one of those states. Instead, it would be enough to initiate a conservatorship proceeding in the home state, obtain a court order from that state declining to exercise jurisdiction, and then seek jurisdiction in the significant-connection state that seems most appropriate based on the factors identified in proposed Section 1996(c) (corresponding to UAGPPJA § 206(c)). If that state is a poor choice, the court could decline to exercise jurisdiction and "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." Proposed Section 1996(b) (corresponding to UAGPPJA § 206(b)).

The second situation in which a court would need to examine whether another court has "declined to exercise jurisdiction because this state is a more appropriate forum" would be quite rare. Under UAGPPJA Section 203(3) (proposed Section 1993(e)), a state that is neither the home state nor a significant-connection state (hereafter, a "peripheral state") could exercise jurisdiction if the "proposed conservatee's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum," and exercising jurisdiction in the peripheral state "is consistent with the constitutions of this state and the United States."

Here, it would be necessary to commence a conservatorship proceeding in the home state and each significant-connection state, and to have every one of those states decline to exercise jurisdiction, before a peripheral state could assert jurisdiction. Depending on how many significant-connection states there are, and whether the proposed conservatee has a home state, that process could be quite

burdensome. But that burden would appear to be justified, given the extreme result: the assertion of jurisdiction by a court that has such limited ties to the conservatee that it fails to qualify as either a significant-connection state or the home state.

Having reached this understanding of how UAGPPJA is supposed to work, the staff is now comfortable with UAGPPJA's treatment of the concept of "declining to exercise jurisdiction," at least when all of the states involved have adopted UAGPPJA. We remain a little uncertain about how the concept would apply to a state that has not adopted UAGPPJA. Presumably, a court in such a state, like a court in a UAGPPJA state, has to issue an order before it will be deemed to have "declined to exercise jurisdiction because this state is a more appropriate forum."

To prevent confusion regarding this matter and the concept of "declining to exercise jurisdiction" generally, **it might be helpful to underscore that declining jurisdiction necessarily requires the issuance of a court order.** That could be achieved by making the revisions shown in strikeout and underscore below:

> **§ 1993. Jurisdiction [UAGPPJA § 203]**
>
> 1993. ….
>
> (c) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if, on the date the petition is filed, this state is a significant-connection state and a court of the proposed conservatee's home state has issued an order in which it declined to exercise jurisdiction because this state is a more appropriate forum.
>
> ….
>
> (e) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if all of the following conditions are satisfied:
>
> (1) This state does not have jurisdiction under subdivision (a), (b), (c), or (d).
>
> (2) ~~The~~ Through court orders, the proposed conservatee's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum.
>
> (3) Jurisdiction in this state is consistent with the constitutions of this state and the United States.
>
> ….
>
> **Comment.** Section 1993 is similar to Section 203 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to follow local drafting practices and conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.
>
> ….

Subdivisions (b) and (c), relating to jurisdiction in a significant-connection state, correspond to Section 203(2)(A) of UAGPPJA. Revisions have been made to emphasize that a court may not be deemed to have "declined jurisdiction" unless it has issued an order to that effect.

….

Subdivision (e), relating to jurisdiction in a state that is neither the home state nor a significant-connection state, corresponds to Section 203(3) of UAGPPJA. Revisions have been made to emphasize that a court may not be deemed to have "declined jurisdiction" unless it has issued an order to that effect.

….

See Section 1991(a) (defining "home state" & "significant-connection state"). For limitations on the scope of this chapter, see Section 1981 & Comment.

§ 1996. Appropriate forum [UAGPPJA § 206]

1996. (a) 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.

(b) If a court of this state declines to exercise its jurisdiction under subdivision (a), it shall either dismiss or stay the proceeding. The court's order dismissing or staying the proceeding shall be in writing 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 and expressly require issuance of a written order when a court declines to exercise jurisdiction, which a party can present when seeking jurisdiction in another state. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

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

Would the Commission like to make revisions along these lines?

SPECIAL JURISDICTION
[PROPOSED SECTIONS 1991(A)(1) & 1994]

UAGPPJA Section 203 (corresponding to proposed Section 1993) establishes general jurisdictional rules for the types of proceedings governed by the uniform act. UAGPPJA Section 204 (corresponding to proposed Section 1994) provides for "special jurisdiction" in three situations:

> (a) A court of this state lacking jurisdiction under Section 203(1) through (3) has special jurisdiction to do any of the following:
>
> (1) appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically present in this state;
>
> (2) issue a protective order with respect to real or tangible personal property located in this state;
>
> (3) appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to Section 301.
>
> (b) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment.

The accompanying Comment explains:

> This section lists the special circumstances where a court without jurisdiction under the general rule of Section 203 has jurisdiction for limited purposes. The three purposes are (1) the appointment of a guardian in an emergency for a term not exceeding 90 days for a respondent who is physically located in the state (subsection (a)(1)); (2) the issuance of a protective order for a respondent who owns an interest in real or tangible personal property located in the state (subsection (a)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a guardianship or conservatorship proceeding from another state (subsection (a)(3)). If the court has jurisdiction under Section 203, reference to Section 204 is unnecessary. The general jurisdiction granted under Section 203 includes within it all of the special circumstances specified in this section.
>
> When an emergency arises, action must often be taken on the spot in the place where the respondent happens to be physically located at the time. This place may not necessarily be located in the respondent's home state or even a significant-connection state. Subsection (a)(1) assures that the court where the respondent happens to be physically located at the time has jurisdiction to appoint a guardian in an emergency but only for a limited period of

90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency guardianship procedures. As provided in subsection (b), the emergency jurisdiction is also subject to the authority of the court in the respondent's home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment through repeated temporary appointments.

"Emergency" is specifically defined in Section 201(a)(1). Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

Subsection (a)(2) grants a court jurisdiction to issue a protective order with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the protected person owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

Subsection (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which addresses transfer of a guardianship or conservatorship to another state. A "Catch-22" arises frequently in such cases. The court in the transferring state will not allow the incapacitated or protected person to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the incapacitated or protected person has physically moved and presumably become a resident of the transferee state. Subsection (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding form another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section 105(b), which grants the court jurisdiction to respond to a request for assistance from a court of another state.

As used in UAGPPJA Section 204, the term "emergency" means "a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf." See UAGPPJA § 201(a)(1) (corresponding to proposed Section 1991(a)(1)). The ULC says that this definition of "emergency"

> is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.
>
> Pursuant to Section 204 of this Act, a court has jurisdiction to appoint a guardian in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the respondent's home state. Pursuant to Section 204(b), the emergency proceeding must be dismissed at the request of the court in the respondent's home state.
>
> Appointing a guardian in an emergency should be an unusual event. Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency guardianship statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section 203.

UAGPPJA § 201 Comment.

In connection with the December meeting, Jennifer Wilkerson of the State Bar Trusts and Estates Section raised the possibility of omitting UAGPPJA's definition of "emergency" and the parts of UAGPPJA Section 204 that refer to that definition, and relying instead on California's existing system for appointment of a temporary conservator. *See* First Supplement to Memorandum 2012-50, Exhibit p. 1; *see also* Memorandum 2012-36, Exhibit p. 31. After discussing that possibility with Eric Fish of the ULC, the Commission decided to follow that approach. Minutes (Dec. 2012), p. 5.

The staff attempted to implement that decision in its discussion draft for the April meeting, but expressed concern that California's existing system for appointment of a temporary conservator requires the filing of a petition for appointment of a *permanent* conservator in every case, as well as a petition for

appointment of a temporary conservator. The staff queried whether that would always be appropriate. See Memorandum 2013-9, Attachment pp. 24-25.

The Commission discussed this point at length in April, and eventually decided that "[i]nstead of referring to California's process for appointment of a temporary conservator, proposed Probate Code Section 1994 should follow the approach used in UAGPPJA Sections 201(a)(1) and 204." Minutes (Feb. 2013). The attached draft would follow that approach. See proposed Sections 1991(a)(1), 1994.

On reflection, however, the staff believes this approach requires some refinement. We think it is a good idea to use UAGPPJA's definition of "emergency" and to give a court special jurisdiction to appoint a conservator of the estate in an "emergency" for a proposed conservatee who is physically present in California. The Comment to UAGPPJA Section 204 explains that "[b]ecause of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, *the drafters of this Act concluded that adding a uniform definition of emergency was essential*." (Emphasis added.) The Comment to UAGPPJA Section 201 is equally emphatic about the need for uniformity in defining "emergency":

> Although most states have emergency guardianship statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. *To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential.*

(Emphasis added.) Given the ULC's emphasis on using a uniform definition of "emergency" for purposes of determining "special jurisdiction," it seems wise to follow that approach.

However, UAGPPJA Section 204(a)(1) simply says that a court otherwise lacking jurisdiction has "special jurisdiction" to "appoint a guardian in an emergency for a term not exceeding [90] days for a respondent who is physically present in this state." The provision does not specify the procedure a court must follow in making such an emergency appointment. Moreover, the usual procedure for appointing a conservator of the estate in California would be too slow and laborious to use in an emergency situation. For example, the citation and a copy of the petition for appointment must be served on the proposed conservatee "at least 15 days before the hearing" (Section 1824), and a court

investigator must conduct an extensive investigation, prepare a written report, and provide that report to the court and others "at least five days before the hearing" (Section 1826).

Rather than using the usual procedure for appointment of a conservator of the estate, it seems preferable to **use California's procedure for appointment of a temporary conservator, while still relying on UAGPPJA's definition of "emergency" and giving a court "special jurisdiction" to make an appointment in an "emergency" for a proposed conservatee who is located in the state.** To assist the Commission and others in evaluating this idea, relevant parts of California's temporary conservatorship statute are reproduced at Exhibit pages 5-13. Notably, Section 2257 limits the duration of a temporary conservatorship to a maximum of 30 days, but allows the court to extend that time for good cause.

The Commission could implement the above approach by revising proposed Section 1994 and the accompanying Comment as shown in strikeout and underscore below:

> **§ 1994. Special jurisdiction [UAGPPJA § 204]**
>
> 1994. (a) A court of this state lacking jurisdiction under subdivisions (a) to (e), inclusive, of Section 1993 has special jurisdiction to do any of the following:
>
> (1) Appoint a temporary conservator of the person in an emergency ~~for a term not exceeding [90] days~~ for a proposed conservatee who is physically present in this state. In making an appointment under this paragraph, a court shall follow the procedures specified in Chapter 3 (commencing with Section 2250) of Part 4. The temporary conservatorship shall terminate in accordance with Section 2257.
>
> (2) Appoint a conservator of the estate with respect to real or tangible personal property located in this state.
>
> (3) Appoint a conservator of the person, conservator of the estate, or conservator of the person and estate for a proposed conservatee for whom a provisional order to transfer a proceeding from another state has been issued under procedures similar to Section 2001.
>
> (b) If a petition for the appointment of a conservator of the person in an emergency is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment of a conservator of the person.
>
> **Comment.** Section 1994 is similar to Section 204 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 specify the procedure for making an emergency appointment under paragraph (a)(1).

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

Does the Commission want to make the revisions shown above?

If the Commission decides to make these revisions, then it should also **consider whether it is appropriate in this context to require the filing of a petition for appointment of a *permanent* conservator in every case,** as well as a petition for appointment of a temporary conservator. The existing provisions governing temporary conservatorships impose such a requirement. See Exhibit pp. 5-13. If the Commission deems it advisable, that requirement could be eliminated in this context. See Memorandum 2013-9, Attachment pp. 54-57. In deciding how to handle this point, the Commission should bear in mind that proposed Section 1994 would only apply when a court lacks jurisdiction as the home state, as a significant-connection state, and even as a peripheral state. See proposed Section 1994(a).

ACCEPTING A CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE [PROPOSED SECTION 2002]

In a phone conversation with the Chief Deputy Counsel after the February meeting, Jennifer Wilkerson offered a number of suggestions. In providing this input, she was speaking informally, expressing her individual views rather than those of any organization.

Several of Ms. Wilkerson's suggestions relate to proposed Section 2002 (corresponding to UAGPPJA § 302), which would specify the procedure for accepting a conservatorship that is transferred to California from another state. Those suggestions are discussed below.

Content of the First Page of a Petition for Acceptance of Transfer (Proposed Section 2002(a)(3))

Paragraph (a)(3) of Section 2002 would require that certain information be included on the first page of a petition for acceptance of a transfer:

> (3) The first page of the petition must state that the conservatee is not a minor or an adult with a developmental disability. The first

> page of the petition must also state that the conservatee is not receiving involuntary mental health treatment and there are no plans for the conservatee to receive involuntary mental health treatment after transfer of the conservatorship.

The Comment explains that this provision "serves to facilitate compliance with Section 1981 (scope of chapter)."

Ms. Wilkerson suggested that instead of requiring a petition to state that (1) the conservatee is not a minor, (2) the conservatee is not an adult with a developmental disability, (3) the conservatee is not receiving involuntary mental health treatment and (4) there are no plans for the conservatee to receive involuntary mental health treatment after transfer of the conservatorship, it might be simpler to cross-refer to proposed Section 1981. Ms. Wilkerson also noted that grammatically it would be preferable to say that "the petitioner must state" than to say that "the first page of the petition must state."

Those suggestions could be implemented by revising proposed Section 2002(a)(3) to read:

> (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.

Would the Commission like to make this revision?

Preliminary Court Investigation (Proposed Section 2002(c)(2))

Paragraph (c)(2) of proposed Section 2002 would direct a court to gather certain information before it holds a hearing on a petition for acceptance of a transfer:

> (2) Before the hearing under paragraph (1), the court shall gather sufficient information to permit the judge to determine whether the requirements of subdivision (d) are satisfied.

The Comment explains:

> Paragraph (2) of subdivision (c) *directs the court to conduct a preliminary investigation before provisionally granting a petition to transfer a conservatorship to California.* The scope of this investigation is limited because it may be difficult to obtain information about the conservatorship while the conservatee, the conservator, or both are located in another state. A more extensive investigation is required later. See subdivisions (e) & (f).

(Emphasis added.)

Paragraph (c)(2) thus calls for a preliminary court investigation that focuses on whether the standard for provisionally granting a transfer petition is satisfied. That standard is stated in subdivision (d):

> (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 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.

Ms. Wilkerson expressed concern about whether it is appropriate to require the court to "gather sufficient information" to permit it to determine whether the standard is satisfied. She said it might be better to require *the petitioner to submit* sufficient information to enable the court to make the determination. In other words, the burden of gathering the necessary information would be placed on the petitioner, instead of on the court. A court investigation would occur only later in the transfer process.

The staff is not sure whether it would be sufficient to rely on the petitioner to submit the necessary information. **Comments on that point would be helpful.**

If the Commission agrees with Ms. Wilkerson, then her suggestion could be implemented by revising paragraph (c)(2) and the accompanying Comment along the following lines:

> (2) Before the hearing under paragraph (1), the ~~court~~ petitioner shall ~~gather~~ submit sufficient information to permit the judge to determine whether the requirements of subdivision (d) are satisfied.
>
> ….
>
> **Comment.**…
>
> Paragraph (2) of subdivision (c) directs the ~~court to conduct a preliminary investigation before provisionally granting~~ petitioner to submit sufficient information to enable the court to determine whether to provisionally grant a petition to transfer a conservatorship to California. ~~The scope of this investigation is limited~~ A court investigation is not required at this stage because it may be difficult to obtain information about the conservatorship

while the conservatee, the conservator, or both are located in another state. A ~~more extensive~~ court investigation is required later in the transfer process. See subdivisions (e) & (f).

Alternatively, if the Commission decides to stick with the concept of a preliminary court investigation, it might want to re-express that concept as follows:

(2) Before the hearing under paragraph (1), the court shall ~~gather sufficient information to permit the judge to determine~~ investigate whether the requirements of subdivision (d) are satisfied.

Acceptance of Transfer and Follow-Up Steps (Proposed Section 2002(e))

Paragraph (e) of proposed Section 2002 would provide guidance regarding final approval of a transfer to California and follow-up steps:

(e)(1) The court shall issue a final order accepting the proceeding and appointing the conservator as a conservator of the person, a conservator of the estate, or a conservator of the person and estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 2001 transferring the proceeding to this state. In appointing a conservator under this paragraph, the court shall comply with Sections 1830 and 1835.

(2) A transfer to this state does not become effective unless and until the court issues a final order under paragraph (1). A conservator may not take action in this state pursuant to a transfer petition unless and until the transfer becomes effective.

(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.

(4) When it issues a final order under paragraph (1), the court shall appoint a court investigator under Section 1454, who shall promptly commence an investigation under Section 1851.1.

Ms. Wilkerson expressed concern that this provision does not address or take into account all of the steps that normally occur before a conservator can begin to take action in California.

She explained that when a conservatorship is established in California, the court issues a final order granting the conservatorship petition and setting the bond, if any. *See* Judicial Council Form GC-340. After the court issues the final order, the conservator must take an oath and file the required bond. *See* Section 2300 (oath & bond); *see also* Sections 2320-2335 (bonds of guardians &

conservators). In addition, the court must provide certain materials to the conservator and the conservator must acknowledge receipt of those materials. *See* Sections 1834-1835. (Ms. Wilkerson did not mention this requirement, perhaps because it is already referenced in proposed Section 2002(e).) Only after all of these steps occur does the clerk of court issue the letters of conservatorship. *See* Sections 1834 (conservator's acknowledgment of receipt), 2310-2313 (letters). The conservator cannot take action until after the letters issue. In fact, the order appointing a conservator must "state in capital letters on the first page of the order, in at least 12-point type, the following: WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED." *See* Section 2310(b).

Proposed Section 2002(e) should be revised to properly reflect this procedure. The staff suggests the following revisions:

> (e)(1) The court shall issue a final order accepting the proceeding and appointing the conservator as a conservator of the person, a conservator of the estate, or a conservator of the person and estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 2001 transferring the proceeding to this state. In appointing a conservator under this paragraph, the court shall comply with ~~Sections 1830 and 1835~~ Section 1830.
>
> (2) A transfer to this state does not become effective unless and until the court issues a final order under paragraph (1). A conservator may not take action in this state pursuant to a transfer petition unless and until the transfer becomes effective and all of the following steps have occurred:
>
> (A) The conservator has taken an oath in accordance with Section 2300.
>
> (B) The conservator has filed the required bond, if any.
>
> (C) The court has provided the information required by Section 1835 to the conservator.
>
> (D) The conservator has filed an acknowledgement of receipt as required by Section 1834.
>
> (E) The clerk of the court has issued the letters of conservatorship.
>
> (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.
>
> (4) When it issues a final order under paragraph (1), the court shall appoint a court investigator under Section 1454, who shall promptly commence an investigation under Section 1851.1.

Comment.…

Paragraph (1) of subdivision (e) corresponds to Section 302(e) of UAGPPJA. A second sentence is included to make clear that ~~(1)~~ a final order accepting a proceeding and appointing the conservator to serve in California must meet the same requirements as an order appointing a conservator in a proceeding that originates in California~~, and (2) a court must provide the same written information to the conservator of a transferred conservatorship that it provides to the conservator of a conservatorship that originates in California~~.

Paragraph (2) of subdivision (e) makes clear that a transfer to California does not become effective until the California court enters a final order accepting the conservatorship and appointing the conservator in California. Absent some other source of authority (e.g., registration of the conservatorship under Article 4), the conservator cannot begin to function here as such until the transfer becomes effective *and* all five of the enumerated follow-up steps have occurred.

….

Are these revisions acceptable to the Commission?

EFFECT OF REGISTRATION
[PROPOSED SECTION 2014]

Proposed Section 2014 (corresponding to UAGPPJA § 403) would state the effect of registering another state's conservatorship order in California:

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

(Emphasis added.) The accompanying Comment would explain:

> **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 also been made to:
>
> (1) Conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

(2) *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.*

(3) 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.

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

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

(Emphasis added.)

In drafting this section, the staff sought to implement the Commission's decision that "[r]egistration should not be used as a means of avoiding transfer." Minutes (Oct. 2012), p. 5. As directed by the Commission, the staff attempted to "develop language to appropriately limit the use of registration when a conservatee establishes residence in California." *Id.*

In her phonecall with the Chief Deputy Counsel, Ms. Wilkerson voiced concern that proposed Section 2014 does not express that limitation forcefully enough. She would like the Commission to rephrase the provision to draw more attention to the limitation.

In light of Ms. Wilkerson's suggestion, **the Commission should consider whether proposed Section 2014 can be rephrased to better express the Commission's intent.** Perhaps the following revisions would be helpful:

2014. (a) ~~Upon~~ Except as provided in subdivision (b), 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.

(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.

~~(b)~~ (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.

RELATIONSHIP TO E-SIGN
[PROPOSED SECTION 2112]

Section 502 of UAGPPJA provides:

> **Section 502. Relation to Electronic Signatures in Global and National Commerce Act**
>
> This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

At the February meeting, the Commission directed the staff to "seek information from representatives of the Uniform Law Commission regarding the meaning and import of UAGPPJA Section 502, and conduct other research as necessary to advise the Commission on this matter." Draft Minutes (Feb. 2013), p. 7.

Memorandum 2013-14 presents the staff's research and analysis pertaining to this matter. As explained in that memorandum, the staff recommends that the Commission include a provision like UAGPPJA Section 502 in its proposed legislation. The staff has therefore included proposed Section 2112 in the attached draft. **Is this acceptable to the Commission?**

OPERATIVE DATE
[PROPOSED SECTION 2114]

At the February meeting, the Commission decided that "California's version of UAGPPJA should have a one-year deferred operative date, with a carve-out for the section that directs the Judicial Council to develop court rules and forms." Draft Minutes (Feb. 2013), p. 7. In the attached draft, the staff put the delayed operative date and the carve out in an uncodified section, not in the Probate Code with the rest of the California Conservatorship Jurisdiction Act. That placement will avoid a problem that arose in connection with the Interstate and International Depositions and Discovery Act (Code Civ. Proc. §§ 2029.100-2029.900), in which the old statute was inadvertently repealed before the new statute replacing it became operative. **The staff strongly urges the Commission to approve this approach.**

INVESTIGATION AND REVIEW OF A TRANSFERRED CONSERVATORSHIP [PROPOSED SECTION 1851.1]

Proposed Section 1851.1 would require a court investigator to investigate a conservatorship that is transferred to California and prepare a written report. The section would also require the court to review the conservatorship after receiving the investigator's report. Two issues relating to proposed Section 1851.1 are discussed below.

Use of the Word "Contested"

As presented in the discussion draft that the Commission considered in February, subdivision (f) of proposed Section 1851.1 said:

> (f) The first time that the need for a conservatorship is *contested* 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.

(Emphasis added.)

At the February meeting, the Commission decided that "[t]he word 'contested' should not be used in proposed Probate Code Section 1851.1(f), because that word has specific connotations in the probate context." Minutes (Feb. 2013), p. 7. The Commission directed the staff to draft alternative language and present it to the Commission for review.

In the attached draft, the staff has replaced the word "contested" with the phrase "challenged or raised on the court's own motion." We think that revision will solve the problems that the Commission identified in February. **Does the Commission agree, or would it prefer to rephrase subdivision (f) in another manner?**

Reassessment of the Choice of Conservator Using California's Priority Scheme for Making That Decision

In conducting the investigation required by proposed Section 1851.1, the court investigator would have to "[d]etermine whether the conservatee objects to the conservator or prefers another person to act as conservator." Proposed Section 1851.1(b)(5). The investigator would also have to interview the conservatee, the conservator, and the conservatee's spouse or domestic partner

(if any), and determine whether the conservator is acting in the best interests of the conservatee. *See* proposed Section 1851.1(b)(1) (requiring compliance with Section 1851); *see also* proposed Section 1851.1(b)(2)-(3) (requiring interviews of conservator and spouse or domestic partner). The court would have authority to "take appropriate action in response to the court investigator's report …." Proposed Section 1851.1(c).

In her phonecall with the Chief Deputy Counsel, Jennifer Wilkerson inquired whether the court would make a determination that the choice of conservator is consistent with California's priority scheme for choosing a conservator. In response, the Chief Deputy Counsel pointed out that proposed Section 2002(g) says:

> (g) *Except as otherwise provided by Sections 1851.1 and 2650,* Chapter 3 (commencing with Section 1860), and other law, when the court grants a petition under this section, the court shall recognize a conservatorship order from the other state, including the determination of the conservatee's incapacity and the appointment of the conservator.

(Emphasis added.) Under this provision, the court would be required to recognize the other state's appointment of conservator, "[e]xcept as otherwise provided by Sections 1851.1 and 2650 …."

As explained above, Section 1851.1 would direct the court investigator to obtain and report certain information regarding the conservator, and would authorize the court to take appropriate action in response to the investigator's report. Similarly, the Commission's proposed amendment of Section 2650 would permit removal of a conservator appointed by a court in another jurisdiction if that conservator "would not have been appointed in this state despite being eligible to serve under the law of this state." The normal procedures for removal of a conservator would apply. See Sections 2650-2655.

The staff believes that these provisions would provide ample opportunity for reassessing the choice of conservator in light of California's priorities if warranted or desired, while not mandating full relitigation of that choice in every case. **The Commission should consider whether the attached draft does indeed strike the appropriate balance.** Is some adjustment needed to better protect the policies underlying California's rules governing the choice of conservator?

GROUNDS FOR REMOVAL
[PROPOSED SECTION 2650]

As just discussed, the proposed amendment of Section 2650 would implement the Commission's decision that "Probate Code Section 2650 should be amended to provide that a conservatee who was appointed by another jurisdiction may be removed by the court if that person would not have been appointed under California law." Minutes (Oct. 2012), p. 4. However, that amendment would not implement a related decision made at the same time:

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

Minutes (Oct. 2012), p. 4.

Having reviewed the existing provisions governing the procedure for removing a conservator, the staff does not think any further steps are needed to provide the type of protection the Commission had in mind. Such protection already seems to exist by virtue of Section 2654, which provides:

> 2654. Whenever it appears that the ward or conservatee or the estate may suffer loss or injury during the time required for notice and hearing under this article, the court, on its own motion or on petition, may do either or both of the following:
>
> (a) Suspend the powers of the guardian or conservator pending notice and hearing to such extent as the court deems necessary.
>
> (b) Compel the guardian or conservator to surrender the estate to a custodian designated by the court.

Does the Commission agree with this assessment?

OTHER CONFORMING REVISIONS

The staff is still in the process of determining which provisions of existing law will need to be revised if UAGPPJA is enacted in California. For this reason, and because we believe the attached draft would benefit from further polishing before it is broadly circulated for comment, **we recommend that the Commission delay approval of a tentative recommendation until the June**

meeting. Under that schedule, the Commission would still be on track to finalize its proposal in time to seek introduction of the proposed legislation in 2014.

Respectfully submitted,

Barbara Gaal
Chief Deputy Counsel

PROBATE CODE SECTION 2204
(2012 CAL. STAT. CH. 207, § 1)

2204. (a) If a proceeding for the guardianship of the person of the minor is filed in one county and a custody or visitation proceeding has already been filed in one or more other counties, the following shall apply:

(1) If the guardianship proceeding is filed in a county where the proposed ward and the proposed guardian have resided for six or more consecutive months immediately prior to the commencement of the proceeding, or, in the case of a minor less than six months of age, since the minor's birth, the court in that county is the proper court to hear and determine the guardianship proceeding, unless that court determines that the best interests of the minor require that the proceeding be transferred to one of the other courts. A period of temporary absence no longer than 30 days from the county of the minor or the proposed guardian shall not be considered an interruption of the six-month period.

(2) If the guardianship proceeding is filed in a county where the proposed ward and the proposed guardian have resided for less than six consecutive months immediately prior to the commencement of the proceeding, or, in the case of a minor less than six months of age, a period less than the minor's life, the court shall transfer the case to one of the other courts, unless the court determines that the best interests of the minor require that the guardianship proceeding be maintained in the court where it was filed.

(3) If a petitioner or respondent in a custody or visitation proceeding who is an authorized petitioner under Section 2212 petitions the court where the guardianship proceeding is filed for transfer of the guardianship proceeding to the court where the custody or visitation proceeding is on file at any time before the appointment of a guardian, including a temporary guardian, the provisions of this subdivision shall apply to the court's determination of the petition for transfer. Except as provided in this paragraph, the petition for transfer shall be determined as provided in Sections 2212 to 2217, inclusive.

(b) The following shall apply concerning communications between the courts:

(1) The court where the guardianship proceeding is commenced shall communicate concerning the proceedings with each court where a custody or visitation proceeding is on file prior to making a determination authorized in subdivision (a), including a determination of a petition to transfer.

(2) If a petitioner or respondent, who is authorized to petition to transfer under Section 2212, petitions the court where the guardianship proceeding is filed for transfer of the guardianship after the appointment of a guardian, including a temporary guardian, the court in the guardianship proceeding may communicate with each court where a custody or visitation proceeding is on file before determining the petition for transfer.

(3) If the court in the guardianship proceeding appoints a guardian of the person of the minor, including a temporary guardian, the court shall transmit a copy of the order appointing a guardian to each court where a custody or visitation proceeding is on file, and each of those courts shall file the order in the case file for its custody or visitation proceeding.

(4) The provisions of subdivisions (b) to (e), inclusive, of Section 3410 of the Family Code shall apply to communications between courts under this subdivision.

(5) The Judicial Council shall, on or before January 1, 2013, adopt rules of court to implement the provisions of this subdivision.

(c) For purposes of this section, "custody or visitation proceeding" means a proceeding described in Section 3021 of the Family Code that relates to the rights to custody or visitation of the minor under Part 2 (commencing with Section 3020) of Division 8 of the Family Code.

RULE OF COURT 7.1104
(OPERATIVE JAN. 1, 2013)

Rule 7.1014. Communications between courts in different California counties concerning guardianship venue

(a) **Purpose of rule** This rule addresses the communications between courts concerning guardianship venue required by Probate Code section 2204(b). These communications are between the superior court in one California county where a guardianship proceeding has been filed (referred to in this rule as the guardianship court) and one or more superior courts in one or more other California counties where custody or visitation proceedings under the Family Code involving the ward or proposed ward were previously filed (referred to in this rule as the family court or courts, or the other court or courts).

(b) **Substantive communications between judicial officers** Before making a venue decision on a petition for appointment of a general guardian in a guardianship proceeding described in (a), or a decision on a petition to transfer under Probate Code section filed in the proceeding before the appointment of a guardian or temporary guardian, the judicial officer responsible for the proceeding in the guardianship court must communicate with the judicial officer or officers responsible for the custody proceeding or proceedings in the family court or courts concerning which county provides the venue for the guardianship proceeding that is in the best interests of the ward or the proposed ward.

(1) If the currently responsible judicial officer in the family court or courts cannot be identified, communication must be made with the managing or supervising judicial officer of the family departments of the other court or courts, if any, or his or her designee, or with the presiding judge of the other court or courts or his or her designee.

(2) If courts in more than two counties are involved, simultaneous communications among judicial officers of all of the courts are recommended, if reasonably practicable. If communications occur between some but not all involved courts, the record of these communications must be made available to those judicial officers of the courts who were not included at or before the time the judicial officer of the guardianship court communicates with them.

(3) A record must be made of all communications between judicial officers under this subdivision.

(4) The parties to the guardianship proceeding, including a petitioner for transfer; all persons entitled to notice of the hearing on the petition for appointment of a guardian; and any additional persons ordered by the guardianship court must promptly be informed of the communications and given access to the record of the communications.

(5) The provisions of Family Code section 3410(b) apply to communications between judicial officers under this subdivision, except that the term "jurisdiction" in that section

corresponds to "venue" in this context, and the term "parties" in that section identifies the persons listed in (4).

(c) **Preliminary communications** To assist the judicial officer in making the communication required in (b), the guardianship court may have preliminary communications with each family court to collect information about the proceeding in that court or for other routine matters, including calendar management, and scheduling.

(1) The guardianship court should attempt to collect, and each family court is encouraged to provide, as much of the following information about the proceeding in the family court as is reasonable under the circumstances:

(A) The case number or numbers and the nature of each family court proceeding;

(B) The names of the parties to each family court proceeding, including contact information for self-represented parties; their relationship or other connection to the ward or proposed ward in the guardianship proceeding, and the names and contact information of counsel for any parties represented by counsel;

(C) The current status (active or inactive) of each family court proceeding, whether any future hearings are set in each proceeding, and if so, their dates and times, locations, and nature;

(D) The contents and dates filed of orders in the each family court proceeding that decide or resolve custody or visitation issues concerning the ward or proposed ward in the guardianship proceeding;

(E) Whether any orders of each family court are final, were appealed from, or were the subject of extraordinary writ proceedings, and the current status of any such appeal or proceeding;

(F) The court branch and department where each family court proceeding was assigned and where the proceeding is currently assigned or pending;

(G) The identity of the judicial officer currently assigned to or otherwise responsible for each family court proceeding; and

(H) Other information about each family court proceeding requested by the judicial officer of the guardianship court.

(2) In the discretion of the judicial officer of the guardianship court, preliminary communications under this rule may be between judicial officers of the courts involved or between staff of the guardianship court and judicial officers or court staff of each other court.

(3) Family Code section 3410(c) applies to preliminary communications under this rule.

(d) **Applicability of this rule to petitions to transfer filed after the appointment of a guardian or temporary guardian** Subdivisions (b) and (c) of this rule may, in the discretion of the guardianship court, apply to petitions for transfer described in Probate Code section 2204(b)(2).

(e) **"Record" under this rule** "Record" under this rule has the meaning provided in Family Code section 3410(e).

SB 406 (Evans)
Tribal Court Civil Judgment Act

THE GOAL

SB 406 simplifies and streamlines the process by which California courts recognize and enforce tribal court judgments without altering any rights under current law. In doing so, the bill makes the enforcement of these rights more efficient and economical for both litigants and the courts.

BACKGROUND

With more than 110 federally-recognized tribes located in the state, California is home to more people of Indian ancestry than any other state in the nation. Each tribe is sovereign and has the power of internal self-government, which includes the authority to develop and operate a court system.

Oftentimes, our state courts are asked to enforce the judgment of a non-California court, including judgments of tribal courts. Because tribes are sovereign, their status is similar to that of a foreign country. As such, California courts recognize tribal court judgments under the principles of comity, as they would the judgments of foreign countries. (See *Wilson v. Marchington* (1997) 127 F.3d 805.)

Accordingly, under the principles of comity, state courts generally respect the decisions of tribal courts and will enforce them upon request, so long as the tribal court issuing the decision had fair procedures.

Under existing law, a party seeking enforcement of a civil tribal court judgment in a state superior court currently must do so under the Uniform Foreign-Country Money Judgments Recognition Act (UFCMJRA). The UFCMJRA process can be costly and time-consuming for both the parties and the court, in some cases even causing parties to unnecessarily re-litigate what the tribal court has already decided. Moreover, the procedures under the UFCMJRA are also arguably inadequate as they only apply to money judgments and make it challenging for parties seeking to enforce other types of civil judgments that tribal courts may issue.

THIS BILL

SB 406 (Evans) establishes the Tribal Court Civil Judgment Act, a new legal framework for seeking enforcement of tribal court civil judgments under procedures that are modeled upon the simpler procedures applicable to judgments from the courts of other states, while still applying the principles of comity.

The bill would not change the legal standards state courts apply in recognizing and enforcing specified civil tribal court judgments to which the Act would apply, but merely clarify and consolidate the procedures for doing so into a single streamlined statutory scheme.

SUPPORT

Judicial Council (Sponsor)

OPPOSITION

None Known.

FOR MORE INFORMATION

Contact: Ronak Daylami,
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CHAPTER 3 OF PART 4 OF DIVISION 3 OF THE PROBATE CODE: TEMPORARY GUARDIANS AND CONSERVATORS (PROB. CODE §§ 2250-2258)

§ 2250. Petition for appointment of temporary guardian or conservator

2250. (a) On or after the filing of a petition for appointment of a guardian or conservator, any person entitled to petition for appointment of the guardian or conservator may file a petition for appointment of:

(1) A temporary guardian of the person or estate or both.

(2) A temporary conservator of the person or estate or both.

(b) The petition shall state facts which establish good cause for appointment of the temporary guardian or temporary conservator. The court, upon that petition or other showing as it may require, may appoint a temporary guardian of the person or estate or both, or a temporary conservator of the person or estate or both, to serve pending the final determination of the court upon the petition for the appointment of the guardian or conservator.

(c) If the petitioner is a private professional conservator under Section 2341 or licensed under the Professional Fiduciaries Act, Chapter 6 (commencing with Section 6500) of Division 3 of the Business and Professions Code, the petition for appointment of a temporary conservator shall include both of the following:

(1) A statement of the petitioner's registration or license information.

(2) A statement explaining who engaged the petitioner or how the petitioner was engaged to file the petition for appointment of a temporary conservator and what prior relationship the petitioner had with the proposed conservatee or the proposed conservatee's family or friends, unless that information is included in a petition for appointment of a general conservator filed at the same time by the person who filed the petition for appointment of a temporary conservator.

(d) If the petition is filed by a party other than the proposed conservatee, the petition shall include a declaration of due diligence showing both of the following:

(1) Either the efforts to find the proposed conservatee's relatives named in the petition for appointment of a general conservator or why it was not feasible to contact any of them.

(2) Either the preferences of the proposed conservatee concerning the appointment of a temporary conservator and the appointment of the proposed temporary conservator or why it was not feasible to ascertain those preferences.

(e) Unless the court for good cause otherwise orders, at least five court days before the hearing on the petition, notice of the hearing shall be given as follows:

(1) Notice of the hearing shall be personally delivered to the proposed ward if he or she is 12 years of age or older, to the parent or parents of the proposed ward, and to any person having a valid visitation order with the proposed ward that was effective at the time of the filing of the petition. Notice of the hearing shall not be

delivered to the proposed ward if he or she is under 12 years of age. In a proceeding for temporary guardianship of the person, evidence that a custodial parent has died or become incapacitated, and that the petitioner is the nominee of the custodial parent, may constitute good cause for the court to order that this notice not be delivered.

(2) Notice of the hearing shall be personally delivered to the proposed conservatee, and notice of the hearing shall be served on the persons required to be named in the petition for appointment of conservator. If the petition states that the petitioner and the proposed conservator have no prior relationship with the proposed conservatee and has not been nominated by a family member, friend, or other person with a relationship to the proposed conservatee, notice of hearing shall be served on the public guardian of the county in which the petition is filed.

(3) A copy of the petition for temporary appointment shall be served with the notice of hearing.

(f) If a temporary guardianship is granted ex parte and the hearing on the general guardianship petition is not to be held within 30 days of the granting of the temporary guardianship, the court shall set a hearing within 30 days to reconsider the temporary guardianship. Notice of the hearing for reconsideration of the temporary guardianship shall be provided pursuant to Section 1511, except that the court may for good cause shorten the time for the notice of the hearing.

(g) Visitation orders with the proposed ward granted prior to the filing of a petition for temporary guardianship shall remain in effect, unless for good cause the court orders otherwise.

(h)(1) If a temporary conservatorship is granted ex parte, and a petition to terminate the temporary conservatorship is filed more than 15 days before the first hearing on the general petition for appointment of conservator, the court shall set a hearing within 15 days of the filing of the petition for termination of the temporary conservatorship to reconsider the temporary conservatorship. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship shall be given at least 10 days prior to the hearing.

(2) If a petition to terminate the temporary conservatorship is filed within 15 days before the first hearing on the general petition for appointment of conservator, the court shall set the hearing at the same time that the hearing on the general petition is set. Unless the court otherwise orders, notice of the hearing on the petition to terminate the temporary conservatorship pursuant to this section shall be given at least five court days prior to the hearing.

(i) If the court suspends powers of the guardian or conservator under Section 2334 or 2654 or under any other provision of this division, the court may appoint a temporary guardian or conservator to exercise those powers until the powers are restored to the guardian or conservator or a new guardian or conservator is appointed.

(j) If for any reason a vacancy occurs in the office of guardian or conservator, the court, on a petition filed under subdivision (a) or on its own motion, may

appoint a temporary guardian or conservator to exercise the powers of the guardian or conservator until a new guardian or conservator is appointed.

(k) On or before January 1, 2008, the Judicial Council shall adopt a rule of court that establishes uniform standards for good cause exceptions to the notice required by subdivision (e), limiting those exceptions to only cases when waiver of the notice is essential to protect the proposed conservatee or ward, or the estate of the proposed conservatee or ward, from substantial harm.

(*l*) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

§ 2250.2. Petition for appointment of temporary conservator in proceeding under Chapter 3 of Part 1 of Division 5 of Welfare & Institutions Code

[This provision has been omitted because it pertains to proceedings involving involuntary mental health treatment, which would not be covered by the Commission's proposed legislation. See proposed Section 1981(b).]

§ 2250.4. Hearing on appointment of temporary conservator

2250.4. The proposed temporary conservatee shall attend the hearing except in the following cases:

(a) If the proposed temporary conservatee is out of the state when served and is not the petitioner.

(b) If the proposed temporary conservatee is unable to attend the hearing by reason of medical inability.

(c) If the court investigator has visited the proposed conservatee prior to the hearing and the court investigator has reported to the court that the proposed temporary conservatee has expressly communicated that all of the following apply:

(1) The proposed conservatee is not willing to attend the hearing.

(2) The proposed conservatee does not wish to contest the establishment of the temporary conservatorship.

(3) The proposed conservatee does not object to the proposed temporary conservator or prefer that another person act as temporary conservator.

(d) If the court determines that the proposed conservatee is unable or unwilling to attend the hearing, and holding the hearing in the absence of the proposed conservatee is necessary to protect the conservatee from substantial harm.

(e) A superior court shall not be required to perform any duties imposed by this section until the Legislature makes an appropriation identified for this purpose.

§ 2250.6. Investigation

2250.6. (a) Regardless of whether the proposed temporary conservatee attends the hearing, the court investigator shall do all of the following prior to the hearing,

unless it is not feasible to do so, in which case the court investigator shall comply with the requirements set forth in subdivision (b):

(1) Interview the proposed conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821 before the hearing.

(2) Inform the proposed conservatee of the contents of the citation, of the nature, purpose, and effect of the temporary conservatorship, and of the right of the proposed conservatee to oppose the proceeding, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(3) Determine whether it appears that the proposed conservatee is unable to attend the hearing and, if able to attend, whether the proposed conservatee is willing to attend the hearing.

(4) Determine whether the proposed conservatee wishes to contest the establishment of the conservatorship.

(5) Determine whether the proposed conservatee objects to the proposed conservator or prefers another person to act as conservator.

(6) Report to the court, in writing, concerning all of the foregoing.

(b) If not feasible before the hearing, the court investigator shall do all of the following within two court days after the hearing:

(1) Interview the conservatee personally. The court investigator also shall do all of the following:

(A) Interview the petitioner and the proposed conservator, if different from the petitioner.

(B) To the greatest extent possible, interview the proposed conservatee's spouse or registered domestic partner, relatives within the first degree, neighbors and, if known, close friends.

(C) To the extent possible, interview the proposed conservatee's relatives within the second degree as set forth in subdivision (b) of Section 1821.

(2) Inform the conservatee of the nature, purpose, and effect of the temporary conservatorship, as well as the right of the conservatee to oppose the proposed general conservatorship, to attend the hearing, to have the matter of the establishment of the conservatorship tried by jury, to be represented by legal counsel if the proposed conservatee so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

(c) If the investigator does not visit the conservatee until after the hearing at which a temporary conservator was appointed, and the conservatee objects to the appointment of the temporary conservator, or requests an attorney, the court investigator shall report this information promptly, and in no event more than three court days later, to the court. Upon receipt of that information, the court may proceed with appointment of an attorney as provided in Chapter 4 (commencing with Section 1470) of Part 1.

(d) If it appears to the court investigator that the temporary conservatorship is inappropriate, the court investigator shall immediately, and in no event more than two court days later, provide a written report to the court so the court can consider taking appropriate action on its own motion.

(e) A superior court shall not be required to perform any duties imposed by this section until the Legislature makes an appropriation identified for this purpose.

§ 2250.8. Scope of application

2250.8. Sections 2250, 2250.4, and 2250.6 shall not apply to proceedings under Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code.

§ 2251. Issuance of letters

2251. A temporary guardian or temporary conservator shall be issued letters of temporary guardianship or conservatorship upon taking the oath and filing the bond as in the case of a guardian or conservator. The letters shall indicate the termination date of the temporary appointment.

§ 2252. Powers and duties

2252. (a) Except as otherwise provided in subdivisions (b) and (c), a temporary guardian or temporary conservator has only those powers and duties of a guardian or conservator that are necessary to provide for the temporary care, maintenance, and support of the ward or conservatee and that are necessary to conserve and protect the property of the ward or conservatee from loss or injury.

(b) Unless the court otherwise orders:

(1) A temporary guardian of the person has the powers and duties specified in Section 2353 (medical treatment).

(2) A temporary conservator of the person has the powers and duties specified in Section 2354 (medical treatment).

(3) A temporary guardian of the estate or temporary conservator of the estate may marshal assets and establish accounts at financial institutions.

(c) The temporary guardian or temporary conservator has the additional powers and duties as may be ordered by the court (1) in the order of appointment or (2) by subsequent order made with or without notice as the court may require. Notwithstanding subdivision (e), those additional powers and duties may include relief granted pursuant to Article 10 (commencing with Section 2580) of Chapter 6

if this relief is not requested in a petition for the appointment of a temporary conservator but is requested in a separate petition.

(d) The terms of any order made under subdivision (b) or (c) shall be included in the letters of temporary guardianship or conservatorship.

(e) A temporary conservator is not permitted to sell or relinquish, on the conservatee's behalf, any lease or estate in real or personal property used as or within the conservatee's place of residence without the specific approval of the court. This approval may be granted only if the conservatee has been served with notice of the hearing, the notice to be personally delivered to the temporary conservatee unless the court for good cause otherwise orders, and only if the court finds that the conservatee will be unable to return to the residence and exercise dominion over it and that the action is necessary to avert irreparable harm to the conservatee. The temporary conservator is not permitted to sell or relinquish on the conservatee's behalf any estate or interest in other real or personal property without specific approval of the court, which may be granted only upon a finding that the action is necessary to avert irreparable harm to the conservatee. A finding of irreparable harm as to real property may be based upon a reasonable showing that the real property is vacant, that it cannot reasonably be rented, and that it is impossible or impractical to obtain fire or liability insurance on the property.

§ 2253. Change of residence of temporary conservatee

2253. (a) If a temporary conservator of the person proposes to fix the residence of the conservatee at a place other than that where the conservatee resided prior to the commencement of the proceedings, that power shall be requested of the court in writing, unless the change of residence is required of the conservatee by a prior court order. The request shall be filed with the petition for temporary conservatorship or, if a temporary conservatorship has already been established, separately. The request shall specify in particular the place to which the temporary conservator proposes to move the conservatee, and the precise reasons why it is believed that the conservatee will suffer irreparable harm if the change of residence is not permitted, and why no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(b) Unless the court for good cause orders otherwise, the court investigator shall do all of the following:

(1) Interview the conservatee personally.

(2) Inform the conservatee of the nature, purpose, and effect of the request made under subdivision (a), and of the right of the conservatee to oppose the request, attend the hearing, be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if unable to obtain legal counsel.

(3) Determine whether the conservatee is unable to attend the hearing because of medical inability and, if able to attend, whether the conservatee is willing to attend the hearing.

(4) Determine whether the conservatee wishes to oppose the request.

(5) Determine whether the conservatee wishes to be represented by legal counsel at the hearing and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the proposed conservatee wishes to retain or whether the conservatee desires the court to appoint legal counsel.

(6) If the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court, determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee.

(7) Determine whether the proposed change of place of residence is required to prevent irreparable harm to the conservatee and whether no means less restrictive of the conservatee's liberty will suffice to prevent that harm.

(8) Report to the court in writing, at least two days before the hearing, concerning all of the foregoing, including the conservatee's express communications concerning representation by legal counsel and whether the conservatee is not willing to attend the hearing and does not wish to oppose the request.

(c) Within seven days of the date of filing of a temporary conservator's request to remove the conservatee from his or her previous place of residence, the court shall hold a hearing on the request.

(d) The conservatee shall be present at the hearing except in the following cases:

(1) Where the conservatee is unable to attend the hearing by reason of medical inability. Emotional or psychological instability is not good cause for the absence of the conservatee from the hearing unless, by reason of that instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the conservatee.

(2) Where the court investigator has reported to the court that the conservatee has expressly communicated that the conservatee is not willing to attend the hearing and does not wish to oppose the request, and the court makes an order that the conservatee need not attend the hearing.

(e) If the conservatee is unable to attend the hearing because of medical inability, that inability shall be established (1) by the affidavit or certificate of a licensed medical practitioner or (2) if the conservatee is an adherent of a religion whose tenets and practices call for reliance on prayer alone for healing and is under treatment by an accredited practitioner of that religion, by the affidavit of the practitioner. The affidavit or certificate is evidence only of the conservatee's inability to attend the hearing and shall not be considered in determining the issue of need for the establishment of a conservatorship.

(f) At the hearing, the conservatee has the right to be represented by counsel and the right to confront and cross-examine any witness presented by or on behalf of the temporary conservator and to present evidence on his or her own behalf.

(g) The court may approve the request to remove the conservatee from the previous place of residence only if the court finds (1) that change of residence is required to prevent irreparable harm to the conservatee and (2) that no means less

restrictive of the conservatee's liberty will suffice to prevent that harm. If an order is made authorizing the temporary conservator to remove the conservatee from the previous place of residence, the order shall specify the specific place wherein the temporary conservator is authorized to place the conservatee. The temporary conservator may not be authorized to remove the conservatee from this state unless it is additionally shown that such removal is required to permit the performance of specified nonpsychiatric medical treatment, consented to by the conservatee, which is essential to the conservatee's physical survival. A temporary conservator who willfully removes a temporary conservatee from this state without authorization of the court is guilty of a felony.

(h) Subject to subdivision (e) of Section 2252, the court shall also order the temporary conservator to take all reasonable steps to preserve the status quo concerning the conservatee's previous place of residence.

(i) A superior court shall not be required to perform any duties imposed pursuant to the amendments to this section enacted by Chapter 493 of the Statutes 2006 until the Legislature makes an appropriation identified for this purpose.

§ 2254. Removal of temporary conservatee from residence in emergency

2254. (a) Notwithstanding Section 2253, a temporary conservator may remove a temporary conservatee from the temporary conservatee's place of residence without court authorization if an emergency exists. For the purposes of this section, an emergency exists if the temporary conservatee's place of residence is unfit for habitation or if the temporary conservator determines in good faith based upon medical advice that the case is an emergency case in which removal from the place of residence is required (1) to provide medical treatment needed to alleviate severe pain or (2) to diagnose or treat a medical condition which, if not immediately diagnosed and treated, will lead to serious disability or death.

(b) No later than one judicial day after the emergency removal of the temporary conservatee, the temporary conservator shall file a written request pursuant to Section 2253 for authorization to fix the residence of the temporary conservatee at a place other than the temporary conservatee's previous place of residence.

(c) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee from the place of residence to a health facility for treatment without court authorization when the temporary conservatee has given informed consent to the removal.

(d) Nothing in this chapter prevents a temporary conservator from removing a temporary conservatee without court authorization from one health facility where the conservatee is receiving medical care to another health facility where the conservatee will receive medical care.

§ 2255. Inventory and appraisal of estate

2255. (a) Except as provided in subdivision (b), an inventory and appraisal of the estate shall be filed by the temporary guardian or temporary conservator of the estate as required by Article 2 (commencing with Section 2610) of Chapter 7.

(b) A temporary guardian or temporary conservator of the estate may inventory the estate in the final account, without the necessity for an appraisal of the estate, if the final account is filed within 90 days after the appointment of the temporary guardian or temporary conservator.

§ 2256. Settlement and allowance of accounts

2256. (a) Except as provided in subdivision (b), the temporary guardian or temporary conservator of the estate shall present his or her account to the court for settlement and allowance within 90 days after the appointment of a guardian or conservator of the estate or within such other time as the court may fix.

(b) If the temporary guardian or temporary conservator of the estate is appointed guardian or conservator of the estate, the guardian or conservator may account for the administration as temporary guardian or temporary conservator in his or her first regular account.

(c) Accounts are subject to Sections 2621 to 2626, inclusive, Sections 2630 to 2633, inclusive, and Sections 2640 to 2642, inclusive.

§ 2257. Termination of temporary guardianship or conservatorship

2257. (a) Except as provided in subdivision (b), the powers of a temporary guardian or temporary conservator terminate, except for the rendering of the account, at the earliest of the following times:

(1) The time the temporary guardian or conservator acquires notice that a guardian or conservator is appointed and qualified.

(2) Thirty days after the appointment of the temporary guardian or temporary conservator or such earlier time as the court may specify in the order of appointment.

(b) With or without notice as the court may require, the court may for good cause order that the time for the termination of the powers of the temporary guardian or temporary conservator be extended or shortened pending final determination by the court of the petition for appointment of a guardian or conservator or pending the final decision on appeal therefrom or for other cause. The order which extends the time for termination shall fix the time when the powers of the temporary guardian or temporary conservator terminate except for the rendering of the account.

§ 2258. Suspension, removal, resignation, and discharge

2258. A temporary guardian or temporary conservator is subject to the provisions of this division governing the suspension, removal, resignation, and discharge of a guardian or conservator.

Contents

PROPOSED LEGISLATION

Prob. Code §§ 1980-2114 (added). Interstate Jurisdiction, Transfer, and Recognition: California Conservatorship Jurisdiction Act

SEC. ____. Chapter 8 (commencing with Section 1980) is added to Part 3 of Division 4 of the Probate Code, to read:

CHAPTER 8. INTERSTATE JURISDICTION, TRANSFER, AND RECOGNITION: CALIFORNIA CONSERVATORSHIP JURISDICTION ACT

Comment. The Uniform Law Commission approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA") in 2007. This chapter contains the California version of that Act, which may be referred to as the California Conservatorship Jurisdiction Act. Many provisions in this chapter are the same as or are drawn from UAGPPJA. In Comments to sections in this chapter, a reference to the "uniform act" or "UAGPPJA" means the official text of the uniform act approved by the Uniform Law Commission. Variations from the official text of the uniform act are noted in the Comments to sections in this chapter.

Article 1. General Provisions

Background from Uniform Act

Article 1 contains definitions and general provisions used throughout the Act. Definitions applicable only to Article 2 are found in Section [1991]. Section [1980] is the title, Section [1982] contains the definitions, and Sections [1983-1986] the general provisions. Section [1983] provides that a court of an enacting state may treat a foreign country as a state for the purpose of applying all portions of the Act other than Article 4.… Section [1984] addresses communication between courts, Section [1985] requests by a court to a court in another state for assistance, and Section [1986] the taking of testimony in other states. These Article 1 provisions relating to court communication and assistance are essential tools to assure the effectiveness of the provisions of Article 2 determining jurisdiction and in facilitating transfer of a proceeding to another state as authorized in Article 3.

[Adapted from the Uniform Law Commission's General Comment to Article 1 of UAGPPJA.]

§ 1980. Short title [UAGPPJA § 101]

1980. (a) By enacting this chapter, it is the Legislature's intent to enact a modified version of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

(b) This chapter may be cited as the "California Conservatorship Jurisdiction Act."

Comment. Section 1980 is similar to Section 101 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). The section provides a shorthand means of referring to the content of this chapter.

Due to differences between California terminology and that of the Uniform Law Commission, the short title provided in the uniform act ("Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act") could cause confusion within this state. See Sections 1500-1502 ("guardian" may only be nominated for minor, not for adult); see also Sections 1301, 4126 &

4672 (using term "protective proceeding" differently than in uniform act); Cal. R. Ct. 7.51(d), 10.478(a) & 10.776(a) (same); Welf. & Inst. Code § 15703 (same). The alternative title provided in this section ("California Conservatorship Jurisdiction Act") is consistent with California terminology for the types of proceedings covered by UAGPPJA.

For guidance on interpretation of a uniform act enacted in this state, see Section 2(b) ("A provision of this code, insofar as it is the same in substance as a provision of a uniform act, shall be so construed as to effectuate the general purpose to make uniform the law in those state which enact that provision."); see also Section 2111 (uniformity of application and construction of California Conservatorship Jurisdiction Act).

Background from Uniform Act

The title to the Act succinctly describes the Act's scope. The Act applies only to court jurisdiction and related topics for adults for whom the appointment of a [conservator] is being sought or has been issued.

The drafting committee elected to limit the Act to adults for two reasons. First, jurisdictional issues concerning guardians for minors are subsumed by the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Second, while the UCCJEA does not address … issues involving the property of minors, all of the problems and concerns that led the Uniform Law Commission to appoint a drafting committee involved adults.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 101.]

§ 1981. Limitations on scope of chapter

1981. (a)(1) This chapter does not apply to a minor, regardless of whether the minor is or was married.

(2) This chapter does not apply to any proceeding in which a person is appointed to provide personal care or property administration for a minor, including, but not limited to, a guardianship under Part 2 (commencing with Section 1500).

(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, including, but not limited to, any of the following proceedings or any proceeding that is similar in substance:

(1) A proceeding under Sections 1026 to 1027, inclusive, of the Penal Code.

(2) A proceeding under Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code.

(3) A proceeding under Article 4 (commencing with Section 2960) of Chapter 7 of Title 1 of Part 3 of the Penal Code.

(4) A proceeding under Article 6 (commencing with Section 1800) of Chapter 1 of Division 2.5 of the Welfare and Institutions Code.

(5) A proceeding under Article 2 (commencing with Section 3050) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(6) A proceeding under Article 3 (commencing with Section 3100) of Chapter 1 of Division 3 of the Welfare and Institutions Code.

(7) A proceeding under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, which is also known as the Lanterman-Petris-Short Act.

(8) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(9) A proceeding under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(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, including, but not limited to, the following types of proceedings:

(1) A proceeding under Article 7.5 (commencing with Section 416) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code.

(2) A limited conservatorship under subdivision (d) of Section 1801.

(3) A proceeding under Section 4825 of the Welfare and Institutions Code.

(4) A proceeding under Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

Comment. Section 1981 restricts the scope of this chapter.

Paragraph (1) of subdivision (a) makes explicit that this chapter does not apply to a minor, even if the minor is married or has had a marriage dissolved. Paragraph (2) states a corollary rule: The chapter does not apply to any proceeding in which a person is appointed to provide personal care or property administration for a minor. Those limitations are consistent with the scope of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). See UAGPPJA § 102(1) (defining "adult" as "an individual who has attained [18] years of age"). The uniform act does, however, recognize that some states may wish to modify that scope because their conservatorship law encompasses certain minors. See UAGPPJA § 102 Comment. Under California law, a minor who is or was married is treated as an adult for some but not all purposes. See, e.g., Sections 1515 & Comment (guardian of estate may be appointed for minor who is married or has had marriage dissolved, but not guardian of person), 1800.3 & Comment (conservator of person may be appointed for minor who is married or has had marriage dissolved, but not conservator of estate), 1860 & Comment (dissolution of minor's marriage does not terminate conservatorship of person established for that minor). Different treatment of such minors may apply in other states. To prevent confusion and avoid complications that might arise due to differential treatment of such minors across state lines, they are expressly excluded from the scope of this chapter and the chapter is strictly limited to adults. For definitions consistent with this limitation, see Section 1982 (defining "adult," "conservatee" & other terms).

Subdivision (b) makes clear that this chapter is inapplicable to any proceeding in which an individual is involuntarily committed to a mental health facility or subjected to other involuntary mental health care. This encompasses, but is not limited to, a conservatorship under the Lanterman-Petris-Short Act (Welf. & Inst. Code §§ 5000-5550), a civil commitment of a person found not guilty by reason of insanity (Penal Code §§ 1026-1027), a civil commitment of a person found incompetent to stand trial (Penal Code §§ 1367-1376), a civil commitment of a mentally disordered offender (Penal Code §§ 2960-2981), a civil commitment of a person who would otherwise be discharged from the Youth Authority (Welf. & Inst. Code §§ 1800-1803), a civil commitment of a narcotics addict (Welf. & Inst. Code §§ 3050-3555, 3100-3111), a civil commitment of a person with a developmental disability who is dangerous to others or to self (Welf. & Inst. Code §§ 6500-6513), and a civil commitment of a sexually violent predator (Welf. & Inst. Code §§ 6600-6609.3).

Authority to involuntarily commit a person in California, or to subject a person to other involuntary mental health treatment here, cannot be obtained merely by transferring an out-of-state conservatorship pursuant to Article 3, or by registering an out-of-state conservatorship pursuant to Article 4. To obtain such authority, it is necessary to follow the procedures provided by California law.

Subdivision (c) makes clear that the transfer procedure provided in Article 3 of this chapter (Sections 2001-2002) does not apply to an adult with a developmental disability. Consistent with

that rule, subdivision (c) also states that the transfer procedure is inapplicable to several types of proceedings specifically designed for such an adult.

Under California law, an adult with a developmental disability is entitled to be evaluated by a regional center and to receive a broad range of services pursuant to an individualized plan. See Welf. & Inst. Code § 4646; see also Sanchez v. Johnson, 416 F.3d 1051, 1064-68 (9th Cir. 2001). The intent is to "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." Welf. & Inst. Code § 4501; see also Welf. & Inst. Code §§ 4500-4868 ("Services for the Developmentally Disabled"). To further that intent, California provides a variety of conservatorship possibilities for an adult with a developmental disability, including the option of a limited conservatorship in which the adult "retain[s] all legal and civil rights except those which by court order have been designated as legal disabilities and have been specifically granted to the limited conservator." Section 1801(d); *cf*. Section 1801(a)-(c) (regular Probate Code conservatorship); Health & Safety Code §§ 416-416.23 (Director of Developmental Services as conservator for developmentally disabled person); Welf. & Inst. Code §§ 6500-6513 (judicial commitment of person with developmental disability who is dangerous to others or to self).

By precluding use of Article 3's streamlined transfer procedure, subdivision (c) serves to ensure that when an adult with a developmental disability is relocated to California, that adult will receive the benefit of California's procedures for such adults, and full recognition of the rights to which the adult is entitled under California law. Likewise, subdivision (c) helps assure that when such an adult is relocated from California to another jurisdiction, that jurisdiction will have to evaluate the adult's needs and the available resources using its normal processes, not an abbreviated transfer procedure.

☞ **Note.** For the reasons stated in the Comment, proposed Section 1981(c) would make UAGPPJA's streamlined transfer procedure (Article 3) inapplicable to a conservatorship of an adult with a developmental disability. The remainder of UAGPPJA — the general provisions (Article 1), the jurisdictional rules (Article 2), the registration procedure (Article 4), and the miscellaneous provisions (Article 5) — would apply to such a conservatorship.

The Commission seeks comment on any aspect of proposed Section 1981, but would especially appreciate input on the proposed treatment of an adult with a developmental disability. Is the proposed approach sound? Why or why not? If not, what alternative approach would be preferable?

§ 1982. Definitions [UAGPPJA § 102]

1982. In this chapter:

(a) "Adult" means an individual who has attained 18 years of age.

(b) "Conservatee" means an adult for whom a conservator of the estate, a conservator of the person, or a conservator of the person and estate has been appointed.

(c) "Conservator" means a person appointed by the court to serve as a conservator of the estate, a conservator of the person, or a conservator of the person and estate.

(d) "Conservator of the estate" means a person appointed by the court to administer the property of an adult, including, but not limited to, a person appointed for that purpose under subdivision (b) of Section 1801.

(e) "Conservator of the person" means a person appointed by the court to make decisions regarding the person of an adult, including, but not limited to, a person appointed for that purpose under subdivision (a) of Section 1801.

(f) "Conservator of the person and estate" means a person appointed by the court to make decisions regarding the person of an adult and to administer the property of that adult, including, but not limited to, a person appointed for those purposes under subdivision (c) of Section 1801.

(g) "Conservatorship order" means an order appointing a conservator of the estate, a conservator of the person, or a conservator of the person and estate in a conservatorship proceeding.

(h) "Conservatorship proceeding" means a judicial proceeding in which an order for the appointment of a conservator of the estate, a conservator of the person, or a conservator of the person and estate is sought or has been issued.

(i) "Party" means the conservatee, proposed conservatee, petitioner, conservator, or any other person allowed by the court to participate in a conservatorship proceeding.

(j) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(k) "Proposed conservatee" means an adult for whom a conservatorship order is sought.

(*l*) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(m) Notwithstanding Section 74, "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

Comment. Section 1982 defines terms used in this chapter. To prevent confusion, the definitions generally conform to usage elsewhere in this code and throughout this state, instead of the conflicting usage employed by the Uniform Law Commission in the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA").

Subdivision (a) (defining "adult") is the same as Section 102(1) of UAGPPJA. This chapter only applies to a conservatorship for an adult. The chapter does not apply to a minor, even if the minor is married or has had a marriage dissolved. See Section 1981(a) & Comment (scope of chapter).

Subdivision (b) (defining "conservatee") is similar to Section 102(6) & (9) of UAGPPJA (defining "incapacitated person" and "protected person").

Subdivision (c) (defining "conservator") is included for drafting convenience.

Subdivision (d) (defining "conservator of the estate") is similar to Section 102(2) of UAGPPJA (defining "conservator"). See Section 1801(b) (standard for appointment of conservator of estate).

Subdivision (e) (defining "conservator of the person") is similar to Section 102(3) of UAGPPJA (defining "guardian"). See Section 1801(a) (standard for appointment of conservator of person).

Subdivision (f) (defining "conservator of the person and estate") is included for the sake of completeness. See Section 1801(c) (standard for appointment of conservator of person and estate).

Subdivision (g) (defining "conservatorship order") is similar to Section 102(4) & (10) of UAGPPJA (defining "guardianship order" and "protective order").

Subdivision (h) (defining "conservatorship proceeding") is similar to Section 102(5) & (11) of UAGPPJA (defining "guardianship proceeding" and "protective proceeding").

Subdivision (i) (defining "party") is similar to Section 102(7) of UAGPPJA (defining "party").

Subdivision (j) (defining "person") is similar to Section 102(8) of UAGPPJA (defining "person"). See also Section 56 ("person").

Subdivision (k) (defining "proposed conservatee") is similar to Section 102(13) of UAGPPJA (defining "respondent).

Subdivision (*l*) (defining "record") is the same as Section 102(12) of UAGPPJA.

Subdivision (m) (defining "State") is the same as Section 102(14) of UAGPPJA.

Background from Uniform Act

Section [1982] is not the sole definitional section in the Act. Section [1991] contains definitions of important terms used only in Article 2. These are the definitions of "emergency" [Section [1991(a)(1)], "home state" [Section 1991(a)(2)], and "significant-connection state" [Section 1991(a)(3)].

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 102.]

§ 1983. International application of chapter [UAGPPJA § 103]

1983. A court of this state may treat a foreign country as if it were a state for the purpose of applying this article and Articles 2, 3, and 5.

Comment. Section 1983 is the same as Section 103 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA").

Background from Uniform Act

This section addresses application of the Act to [conservatorship orders] issued in other countries. A foreign order is not enforceable pursuant to the registration procedures of Article 4, but a court in this country may otherwise apply this Act to a foreign proceeding if the foreign country were an American state. Consequently, a court may conclude that the court in the foreign country has jurisdiction because it constitutes the [proposed conservatee's] "home state" or "significant-connection state" and may therefore decline to exercise jurisdiction on the ground that the court of the foreign country has a higher priority under Section [1993]. Or the court may treat the foreign country as if it were a state of the United States for purposes of applying the transfer provisions of Article 3.

This section addresses similar issues to but differs in result from Section 105 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under the UCCJEA, the United States court must honor a custody order issued by the court of a foreign country if the order was issued under factual circumstances in substantial conformity with the jurisdictional standards of the UCCJEA. Only if the child custody law violates fundamental principles of human rights is enforcement excused. Because [conservatorship] regimes vary so greatly around the world, particularly in civil law countries, it was concluded that under this Act a more flexible approach was needed. Under this Act, a court may but is not required to recognize the foreign order.

The fact that a [conservatorship] order of a foreign country cannot be enforced pursuant to the registration procedures of Article 4 does not preclude enforcement by the court under some other provision or rule of law.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 103.]

§ 1984. Communication between courts [UAGPPJA § 104]

1984. (a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subdivision (b), the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(b) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record.

Comment. Section 1984 is the same as Section 104 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA").

Although this section authorizes communication between courts, it does not authorize ex parte communication between a party (or attorney for a party) and a court. For guidance on ex parte communication, see Section 1051 and Rule 7.10 of the California Rules of Court.

Background from Uniform Act

This section emphasizes the importance of communications among courts with an interest in a particular matter. Most commonly, this would include communication between courts of different states to resolve an issue of which court has jurisdiction to proceed under Article 2. It would also include communication between courts of different states to facilitate the transfer of a … conservatorship to a different state under Article 3. Communication can occur in a variety of ways, including by electronic means. This section does not prescribe the use of any particular means of communication.

The court may authorize the parties to participate in the communication. But the Act does not mandate participation or require that the court give the parties notice of any communication. Communication between courts is often difficult to schedule and participation by the parties may be impractical. Phone calls or electronic communications often have to be made after-hours or whenever the schedules of judges allow. When issuing a jurisdictional or transfer order, the court should set forth the extent to which a communication with another court may have been a factor in the decision.

….

This section does not prescribe the extent of the record that the court must make, leaving that issue to the court. A record might include notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum summarizing a conversation, and email communications. No record need be made of relatively inconsequential matters such as scheduling, calendars, and court records.

Section 110 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) addresses similar issues as this section but is more detailed. As is the case with several other provisions of this Act, the drafters of this Act concluded that the more varied circumstances of [conservatorship] proceedings suggested a greater need for flexibility.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 104.]

☞ **Note.** The Commission seeks comment on any aspect of proposed Section 1984, but would especially appreciate input on whether a court should charge any fees for the court services described in that section, and, if so, what fees to charge.

In seeking this input, the Commission notes that proposed Section 1984 is similar to Family Code Section 3410, which governs communications between courts in matters arising under the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"). Comments describing experience under that section would be particularly helpful. Are any fees charged for court communications under that section? If a court makes a record of a communication under that section, is the record filed? If so, what is the filing fee, if any? Do the answers to these questions depend on whether a proceeding is pending before the court?

§ 1985. Cooperation between courts [UAGPPJA § 105]

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) Hold an evidentiary hearing.

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.

(3) Order that an evaluation or assessment be made of the proposed conservatee.

(4) Order any appropriate investigation of a person involved in a proceeding.

(5) Forward to the court of this state a certified copy of the transcript or other record of a hearing under paragraph (1) or any other proceeding, any evidence otherwise produced under paragraph (2), and any evaluation or assessment prepared in compliance with an order under paragraph (3) or (4).

(6) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the conservatee or the proposed conservatee.

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in Section 160.103 of Title 45 of the Code of Federal Regulations.

(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.

Comment. Section 1985 is similar to Section 105 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.

Background from Uniform Act

[Subdivision (a)] of this section is similar to Section 112(a) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), although modified to address issues of concern in [conservatorship] proceedings and with the addition of [paragraph (a)(7)], which addresses the release of health information protected under HIPAA. [Subdivision (b)], which clarifies that a court has jurisdiction to respond to requests for assistance from courts in other states even though it might otherwise not have jurisdiction over the proceeding, is not found in although probably implicit in the UCCJEA.

Court cooperation is essential to the success of this Act. This section is designed to facilitate such court cooperation. It provides mechanisms for courts to cooperate with each other in order to decide cases in an efficient manner without causing undue expense to the parties. Courts may request assistance from courts of other states and may assist courts of other states. Typically, such assistance will be requested to resolve a jurisdictional issue arising under Article 2 or an issue concerning a transfer proceeding under Article 3.

This section does not address assessment of costs and expenses, leaving that issue to local law. Should a court have acquired jurisdiction because of a party's unjustifiable conduct, Section [1997(b)] authorizes the court to assess against the party all costs and expenses, including attorney's fees.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 105.]

☞ **Note.** The Commission seeks comment on any aspect of proposed Section 1985, but would especially appreciate input on whether a court should charge any fees for court services provided under subdivision (b), and, if so, what fees to charge.

In seeking this input, the Commission notes that proposed Section 1985 is similar to Family Code Section 3412, which governs cooperation between courts in matters arising under the UCCJEA. Subdivision (c) of that provision states that "[t]ravel 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." How does that rule work in practice? Should similar language

be included in proposed Section 1985? Should the Commission take other steps to clarify what fees to charge or how to allocate expenses?

§ 1986. Taking testimony in another state [UAGPPJA § 106]

1986. (a) In a conservatorship proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(b) In a conservatorship proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

Comment. Section 1986 is similar to Section 106(a)-(b) 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 further guidance on taking a deposition in another state for purposes of a proceeding pending in this state, see Code Civ. Proc. § 2026.010; Gov't Code § 70626. For further guidance on telephone depositions, see Code Civ. Proc. § 2025.310. For further guidance on audio or video recording of a deposition, see Code Civ. Proc. §§ 2020.310(c), 2025.220(a), 2025.330(c), 2025.340, 2025.510(f), 2025.530, 2025.560. For the admissibility of secondary evidence (including secondary evidence of a deposition), see Evid. Code §§ 1520-1523 (proof of content of writing). For guidance on taking a deposition in this state for purposes of a proceeding pending in another state, see Code Civ. Proc. §§ 2029.100-2029.900 (Interstate and International Depositions and Discovery Act); Gov't Code § 70626; *Deposition in Out-of-State Litigation,* 37 Cal. L. Revision Comm'n Reports 99 (2007).

Background from Uniform Act

This section is similar to Section 111 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). That section was in turn derived from Section 316 of the Uniform Interstate Family Support Act (1992) and the much earlier and now otherwise obsolete Uniform Interstate and International Procedure Act (1962).

This section is designed to fill the vacuum that often exists in cases involving an adult with interstate contacts when much of the essential information about the individual is located in another state.

[Subdivision (a)] empowers the court to initiate the gathering of out-of-state evidence, including depositions, written interrogatories and other discovery devices. The authority granted to the court in no way precludes the gathering of out-of-state evidence by a party, including the taking of depositions out-of-state.

[Subdivision (b) clarifies] that modern modes of communication are permissible for the taking of depositions and receipt of documents into evidence.…

This section is consistent with and complementary to the Uniform Interstate Depositions and Discovery Act (2007), which specifies the procedure for taking depositions in other states.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 106.]

Article 2. Jurisdiction

Background from Uniform Act

The jurisdictional rules in Article 2 will determine which state's courts may appoint a … conservator. Section [1991] contains definitions of "emergency," "home state," and "significant connection-state," terms used only in Article 2 that are key to understanding the jurisdictional rules under the Act. Section [1992] provides that Article 2 is the exclusive jurisdictional basis for a court of the enacting state to appoint a [conservator]. Consequently, Article 2 is applicable even if all of [proposed conservatee's] significant contacts are in-state. Section [1993] is the principal provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant-connection state, followed by other jurisdictions. But there are circumstances under Section [1993] where a significant-connection state may have jurisdiction even if the [proposed conservatee] also has a home state, or a state that is neither a home or significant-connection state may be able to assume jurisdiction even though the particular [proposed conservatee] has both a home state and one or more significant-connection states. One of these situations is if a state declines to exercise jurisdiction under Section [1996] because a court of that state concludes that a court of another state is a more appropriate forum. Another is Section [1997], which authorizes a court to decline jurisdiction or fashion another appropriate remedy if jurisdiction was acquired because of unjustifiable conduct. Section [1995] provides that once an appointment is made or order issued, the court's jurisdiction continues until the proceeding is terminated or the appointment order expires by its own terms.

Section [1994] addresses special cases. Regardless of whether it has jurisdiction under the general principles stated in Section [1993], a court in the state where the individual is currently physically present has jurisdiction to appoint a [conservator of the person] in an emergency, and a court in a state where an individual's real or tangible personal property is located has jurisdiction to appoint a [conservator of the estate]. In addition, a court not otherwise having jurisdiction under Section [1993] has jurisdiction to consider a petition to accept the transfer of an already existing … conservatorship from another state as provided in Article 3.

The remainder of Article 2 address[es] procedural issues. Section [1998] prescribes additional notice requirements if a proceeding is brought in a state other than the [proposed conservatee's] home state. Section [1999] specifies a procedure for resolving jurisdictional issues if petitions are pending in more than one state.

[Adapted from the Uniform Law Commission's General Comment to Article 2 of UAGPPJA.]

§ 1991. Definitions and significant connection factors [UAGPPJA § 201]

1991. (a) In this article:

(1) "Emergency" means a circumstance that likely will result in substantial harm to a proposed conservatee's health, safety, or welfare, and for which the appointment of a conservator of the person is necessary because no other person has authority and is willing to act on behalf of the proposed conservatee.

(2) "Home state" means the state in which the proposed conservatee was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a conservatorship order, or, if none, the state in which the proposed conservatee was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(3) "Significant-connection state" means a state, other than the home state, with which a proposed conservatee has a significant connection other than mere

physical presence and in which substantial evidence concerning the proposed conservatee is available.

(b) In determining under Section 1993 and subdivision (e) of Section 2001 whether a proposed conservatee has a significant connection with a particular state, the court shall consider all of the following:

(1) The location of the proposed conservatee's family and other persons required to be notified of the conservatorship proceeding.

(2) The length of time the proposed conservatee at any time was physically present in the state and the duration of any absence.

(3) The location of the proposed conservatee's property.

(4) The extent to which the proposed conservatee has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services.

Comment. Subdivision (a) of Section 1991 is similar to Section 201(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.

Subdivision (b) is similar to Section 201(b) of 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.

Background from Uniform Act

The terms "emergency," "home state," and "significant-connection state" are defined in this section and not in Section [1982] because they are used only in Article 2.

The definition of "emergency" [paragraph (a)(1)] is taken from the emergency guardianship provision of the Uniform Guardianship and Protective Proceedings Act (1997), Section 312.

Pursuant to Section [1994], a court has jurisdiction to appoint a [conservator] in an emergency for a period of up to 90 days even though it does not otherwise have jurisdiction. However, the emergency appointment is subject to the direction of the court in the [proposed conservatee's] home state. Pursuant to Section [1994(b)], the emergency proceeding must be dismissed at the request of the court in the [proposed conservatee's] home state.

Appointing a [conservator of the person] in an emergency should be an unusual event. Although most states have emergency [conservatorship] statutes, not all states do, and in those states that do have such statutes, there is great variation on whether and how an emergency is defined. To provide some uniformity on when a court acquires emergency jurisdiction, the drafters of this Act concluded that adding a definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a [conservator] under an emergency [conservatorship] statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section [1993].

Pursuant to Section [1993], a court in the [proposed conservatee's] home state has primary jurisdiction to appoint a [conservator]. A court in a significant-connection state has jurisdiction if the [proposed conservatee] does not have a home state and in other circumstances specified in Section [1993]. The definitions of "home state" and "significant-connection state" are therefore important to an understanding of the Act.

The definition of "home state" [paragraph (a)(2)] is derived from but differs in a couple of respects from the definition of the same term in Section 102 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). First, unlike the definition in the UCCJEA, the definition in this Act clarifies that actual physical presence is necessary. The UCCJEA definition instead focuses on where the child has "lived" for the prior six months. Basing the test on where someone has "lived" may imply that the term "home state" is similar to the concept of domicile.

Domicile, in [a conservatorship] context, is a vague concept that can easily lead to claims of jurisdiction by courts in more than one state. Second, under the UCCJEA, home state jurisdiction continues for six months following physical removal from the state and the state has ceased to be the actual home. Under this Act, the six-month tail is incorporated directly into the definition of home state. The place where the [proposed conservatee] was last physically present for six months continues as the home state for six months following physical removal from the state. This modification of the UCCJEA definition eliminates the need to refer to the six-month tail each time home state jurisdiction is mentioned in the Act.

The definition of "significant-connection state" [paragraph (a)(3)] is similar to Section 201(a)(2) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). However, [subdivision (b)] of this Section adds a list of factors relevant to [conservatorship] proceedings to aid the court in deciding whether a particular place is a significant-connection state. Under Section [2001(e)(1), the significant connection factors listed in the definition are to be taken into account in determining whether a conservatorship may be transferred to another state.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 201.]

§ 1992. Exclusive basis [UAGPPJA § 202]

1992. For a conservatorship proceeding governed by this article, this article provides the exclusive basis for determining whether the courts of this state, as opposed to the courts of another state, have jurisdiction to appoint a conservator of the person, a conservator of the estate, or a conservator of the person and estate.

Comment. Section 1992 is similar to Section 202 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to:

(1) Conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

(2) Make clear that this article only focuses on which state's courts have jurisdiction to appoint a conservator. The article does not address other jurisdictional issues, such as whether an appellate court may make such an appointment.

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

Background from Uniform Act

Similar to Section 201(b) of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), which provides that the UCCJEA is the exclusive basis for determining jurisdiction to issue a child custody order, this section provides that this article is the exclusive jurisdictional basis for determining jurisdiction to appoint a [conservator]. An enacting jurisdiction will therefore need to repeal any existing provisions addressing jurisdiction in [conservatorship proceedings]. The drafters of this Act concluded that limiting the Act to "interstate" cases was unworkable. Such cases are hard to define, but even if they could be defined, overlaying this Act onto a state's existing jurisdictional rules would leave too many gaps and inconsistencies. In addition, if the particular case is truly local, the local court would likely have jurisdiction under both this Act as well as under prior law.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 202.]

§ 1993. Jurisdiction [UAGPPJA § 203]

1993. (a) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if this state is the proposed conservatee's home state.

(b) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if, on the date the petition is filed, this state is a significant-connection state and the respondent does not have a home state.

(c) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if, on the date the petition is filed, this state is a significant-connection state and a court of the proposed conservatee's home state has declined to exercise jurisdiction because this state is a more appropriate forum.

(d) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if both of the following conditions are satisfied:

(1) On the date the petition is filed, this state is a significant-connection state, the proposed conservatee has a home state, and a conservatorship petition is not pending in a court of that state or another significant-connection state.

(2) Before the court makes the appointment, no conservatorship petition is filed in the proposed conservatee's home state, no objection to the court's jurisdiction is filed by a person required to be notified of the proceeding, and the court in this state concludes that it is an appropriate forum under the factors set forth in Section 1996.

(e) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if all of the following conditions are satisfied:

(1) This state does not have jurisdiction under subdivision (a), (b), (c), or (d).

(2) The proposed conservatee's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum.

(3) Jurisdiction in this state is consistent with the constitutions of this state and the United States.

(f) A court of this state has jurisdiction to appoint a conservator for a proposed conservatee if the requirements for special jurisdiction under Section 1994 are met.

Comment. Section 1993 is similar to Section 203 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to follow local drafting practices and conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

Subdivision (a), relating to jurisdiction in the proposed conservatee's home state, corresponds to Section 203(1) of UAGPPJA.

Subdivisions (b) and (c), relating to jurisdiction in a significant-connection state, correspond to Section 203(2)(A) of UAGPPJA.

Subdivision (d), providing another basis for jurisdiction in a significant-connection state, corresponds to Section 203(2)(B) of UAGPPJA.

Subdivision (e), relating to jurisdiction in a state that is neither the home state nor a significant-connection state, corresponds to Section 203(3) of UAGPPJA.

Subdivision (f), relating to special jurisdiction, corresponds to Section 203(4) of UAGPPJA.

See Section 1991(a) (defining "home state" & "significant-connection state"). For limitations on the scope of this chapter, see Section 1981 & Comment.

Background from Uniform Act

Similar to the Uniform Child [Custody] Jurisdiction and Enforcement Act (1997), this Act creates a three-level priority for determining which state has jurisdiction to appoint a [conservator]; the home state (defined in Section [1991(a)(2)]), followed by a significant-connection state (defined in Section [1991(a)(3)]), followed by other jurisdictions. The principal objective of this section is to eliminate the possibility of dual appointments or orders except for

the special circumstances specified in Section [1994].

While this section is the principal provision for determining whether a particular court has jurisdiction to appoint a [conservator], it is not the only provision. As indicated in the cross-reference in Section [1993(f)], a court that does not otherwise have jurisdiction under Section [1993] may have jurisdiction under the special circumstances specified in Section [1994].

Pursuant to Section [1993(a)], the home state has primary jurisdiction to appoint a … conservator …. This jurisdiction terminates if the state ceases to be the home state, if a court of the home state declines to exercise jurisdiction under Section [1996] on the basis that another state is a more appropriate forum, or, as provided in Section [1995], a court of another state has appointed a [conservator] consistent with this Act. The standards by which a home state that has enacted the Act may decline jurisdiction on the basis that another state is a more appropriate forum are specified in Section [1996]. Should the home state not have enacted the Act, Section [1993(a)] does not require that the declination meet the standards of Section [1996].

Once a petition is filed in a court of the [proposed conservatee's] home state, that state does not cease to be the [proposed conservatee's] home state upon the passage of time even though it may be many months before an appointment is made or order issued and during that period the [proposed conservatee] is physically located [elsewhere]. Only upon dismissal of the petition can the court cease to be the home state due to the passage of time. Under the definition of "home state," the six-month physical presence requirement is fulfilled or not on the date the petition is filed. *See* Section [1991(a)(2)].

A significant-connection state has jurisdiction under [these possible bases: Section 1993(b), (c), and (d)]. Under Section [1993(b)], a significant-connection state has jurisdiction if the individual does not have a home state …. [Under Section 1993(c), a significant-connection state has jurisdiction] if the home state has declined jurisdiction on the basis that the significant-connection state is a more appropriate forum.

Section [1993(d)] is designed to facilitate consideration of cases where jurisdiction is not in dispute. Section [1993(d)] allows a court in a significant-connection state to exercise jurisdiction even though the [proposed conservatee] has a home state and the home state has not declined jurisdiction. The significant-connection state may assume jurisdiction under these circumstances, however, only in situations where the parties are not in disagreement concerning which court should hear the case. Jurisdiction may not be exercised by a significant-connection state under Section [1993(d)] if (1) a petition has already been filed and is still pending in the home state or other significant-connection state; or (2) prior to making the appointment …, a petition is filed in the [proposed conservatee's] home state or an objection to the court's jurisdiction is filed by a person required to be notified of the proceeding. Additionally, the court in the significant-connection state must conclude that it is an appropriate forum applying the factors listed in Section [1996].

There is nothing comparable to Section [1993(d)] in the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Under Section 201 of the UCCJEA a court in a significant-connection state acquires jurisdiction only if the child does not have a home state or the court of that state has declined jurisdiction. The drafters of this Act concluded that cases involving adults differed sufficiently from child custody matters that a different rule is appropriate for adult proceedings in situations where jurisdiction is uncontested.

Pursuant to Section [1993(e)], a court in a state that is neither the home state or a significant-connection state has jurisdiction if the home state and all significant-connection states have declined jurisdiction or the [proposed conservatee] does not have a home state or significant-connection state. The state must have some connection with the proceeding, however. As Section [1993(e)] clarifies, jurisdiction in the state must be consistent with the state and United States constitutions.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 203.]

§ 1994. Special jurisdiction [UAGPPJA § 204]

1994. (a) A court of this state lacking jurisdiction under subdivisions (a) to (e), inclusive, of Section 1993 has special jurisdiction to do any of the following:

(1) Appoint a conservator of the person in an emergency for a term not exceeding [90] days for a proposed conservatee who is physically present in this state.

(2) Appoint a conservator of the estate with respect to real or tangible personal property located in this state.

(3) Appoint a conservator of the person, conservator of the estate, or conservator of the person and estate for a proposed conservatee for whom a provisional order to transfer a proceeding from another state has been issued under procedures similar to Section 2001.

(b) If a petition for the appointment of a conservator of the person in an emergency is brought in this state and this state was not the home state of the proposed conservatee on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment of a conservator of the person.

Comment. Section 1994 is similar to Section 204 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.

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

Background from Uniform Act

This section lists the special circumstances where a court without jurisdiction under the general rule of Section [1993] has jurisdiction for limited purposes. The three purposes are (1) the appointment of a [conservator of the person] in an emergency for a term not exceeding 90 days for a [proposed conservatee] who is physically located in the state ([paragraph] (a)(1)); (2) the [appointment of a conservator of the estate] for a [proposed conservatee] who owns an interest in real or tangible personal property located in the state ([paragraph] (a)(2)); and (3) the grant of jurisdiction to consider a petition requesting the transfer of a … conservatorship proceeding from another state ([paragraph] (a)(3)). If the court has jurisdiction under Section [1993], reference to Section [1994] is unnecessary. The general jurisdiction granted under Section [1993] includes within it all of the special circumstances specified in this section.

When an emergency arises, action must often be taken on the spot in the place where the [proposed conservatee] happens to be physically located at the time. This place may not necessarily be located in the [proposed conservatee's] home state or even a significant-connection state. [Paragraph] (a)(1) assures that the court where the [proposed conservatee] happens to be physically located at the time has jurisdiction to appoint a [conservator of the person] in an emergency but only for a limited period of 90 days. The time limit is placed in brackets to signal that enacting states may substitute the time period under their existing emergency [conservatorship] procedures. As provided in [paragraph] (b), the emergency jurisdiction is also subject to the authority of the court in the [proposed conservatee's] home state to request that the emergency proceeding be dismissed. The theory here is that the emergency appointment in the temporary location should not be converted into a de facto permanent appointment through repeated temporary appointments.

"Emergency" is specifically defined in Section [1991(a)(1)]. Because of the great variation among the states on how an emergency is defined and its important role in conferring jurisdiction, the drafters of this Act concluded that adding a uniform definition of emergency was essential. The definition does not preclude an enacting jurisdiction from appointing a guardian under an emergency [conservatorship] statute with a different or broader test of emergency if the court otherwise has jurisdiction to make an appointment under Section [1993].

[Paragraph] (a)(2) grants a court jurisdiction to [appoint a conservator of the estate] with respect to real and tangible personal property located in the state even though the court does not otherwise have jurisdiction. Such orders are most commonly issued when a conservator has been appointed but the [conservatee] owns real property located in another state. The drafters specifically rejected using a general reference to any property located in the state because of the tendency of some courts to issue protective orders with respect to intangible personal property such as a bank account where the technical situs of the asset may have little relationship to the protected person.

[Paragraph] (a)(3) is closely related to and is necessary for the effectiveness of Article 3, which addresses transfer of a … conservatorship to another state. A "Catch-22" arises frequently in such cases. The court in the transferring state will not allow the [conservatee] to move and will not terminate the case until the court in the transferee state has accepted the matter. But the court in the transferee state will not accept the case until the [conservatee] has physically moved and presumably become a resident of the transferee state. [Paragraph] (a)(3), which grants the court in the transferee state limited jurisdiction to consider a petition requesting transfer of a proceeding [from] another state, is intended to unlock the stalemate.

Not included in this section but a provision also conferring special jurisdiction on the court is Section [1985(b)], which grants the court jurisdiction to respond to a request for assistance from a court of another state.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 204.]

§ 1995. Exclusive and continuing jurisdiction [UAGPPJA § 205]

1995. Except as otherwise provided in Section 1994, a court that has appointed a conservator consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment expires by its own terms.

Comment. Section 1995 is similar to Section 205 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.

Background from Uniform Act

While this Act relies heavily on the Uniform Child [Custody] Jurisdiction and Enforcement Act (1997) for many basic concepts, the identity is not absolute. Section 202 of the UCCJEA specifies a variety of circumstances whereby a court can lose jurisdiction based on loss of physical presence by the child and others, loss of a significant connection, or unavailability of substantial evidence. Section 203 of the UCCJEA addresses the jurisdiction of the court to modify a custody determination made in another state. Nothing comparable to either UCCJEA section is found in this Act. Under this Act, a [conservatorship] may be modified only upon request to the court that made the appointment …, which retains exclusive and continuing jurisdiction over the proceeding. Unlike child custody matters, [conservatorships] are ordinarily subject to continuing court supervision. Allowing the court's jurisdiction to terminate other than by its own order would open the possibility of competing … conservatorship appointments in different states for the same person at the same time, the problem under current law that

enactment of this Act is designed to avoid. Should the [conservatee] and others with an interest in the proceeding relocate to a different state, the appropriate remedy is to seek transfer of the proceeding to the other state as provided in Article 3.

The exclusive and continuing jurisdiction conferred by this section only applies to [conservatorship] orders made … under Section [1993]. Orders made under the special jurisdiction conferred by Section [1994] are not exclusive. And as provided in Section [1994(b)], the jurisdiction of a court in a state other than the home state to appoint a [conservator] in an emergency is subject to the right of a court in the home state to request that the proceeding be dismissed and any appointment terminated.

Article 3 authorizes a … conservator to petition to transfer the proceeding to another state. Upon the conclusion of the transfer, the court in the accepting state will appoint the … conservator as … conservator in the accepting state and the court in the transferring estate will terminate the local proceeding, whereupon the jurisdiction of the transferring court terminates and the court in the accepting state acquires exclusive and continuing jurisdiction as provided in Section [1995].

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 205.]

§ 1996. Appropriate forum [UAGPPJA § 206]

1996. (a) 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.

(b) If a court of this state declines to exercise its jurisdiction under subdivision (a), it shall either dismiss or stay the proceeding. 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 all of the following:

(1) Any expressed preference of the proposed conservatee.

(2) Whether abuse, neglect, or exploitation of the proposed conservatee has occurred or is likely to occur and which state could best protect the proposed conservatee from the abuse, neglect, or exploitation.

(3) The length of time the proposed conservatee was physically present in or was a legal resident of this or another state.

(4) The distance of the proposed conservatee from the court in each state.

(5) The financial circumstances of the estate of the proposed conservatee.

(6) The nature and location of the evidence.

(7) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence.

(8) The familiarity of the court of each state with the facts and issues in the proceeding.

(9) If an appointment were made, the court's ability to monitor the conduct of the conservator.

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.

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

Background from Uniform Act

This section authorizes a court otherwise having jurisdiction to decline jurisdiction on the basis that a court in another state is in a better position to make a [conservatorship] determination. The effect of a declination of jurisdiction under this section is to rearrange the priorities specified in Section [1993]. A court of the home state may decline in favor of a court of a significant-connection or other state and a court in a significant-connection state may decline in favor of a court in another significant-connection or other state. The court declining jurisdiction may either dismiss or stay the proceeding. The court may also impose any condition the court considers just and proper, including the condition that a petition for the appointment of a [conservator] be filed promptly in another state.

This section is similar to Section 207 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997) except that the factors in [subdivision (c) of this section] have been adapted to address issues most commonly encountered in [conservatorship] proceedings as opposed to child custody determinations.

Under Section [1993(d)], the factors specified in [subdivision] (c) of this section are to be employed in determining whether a court of a significant-connection state may assume jurisdiction when a petition has not been filed in the [proposed conservatee's] home state or in another significant-connection state. Under Section [1997(a)(3)(B)], the court is to consider these factors in deciding whether it will retain jurisdiction when unjustifiable conduct has occurred.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 206.]

§ 1997. Jurisdiction declined by reason of conduct [UAGPPJA § 207]

1997. (a) If at any time a court of this state determines that it acquired jurisdiction to appoint a conservator because of unjustifiable conduct, the court may do any of the following:

(1) Decline to exercise jurisdiction.

(2) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the conservatee or proposed conservatee or the protection of the property of the conservatee or proposed conservatee or to prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a conservator of the person, conservator of the estate, or conservator of the person and estate is filed in a court of another state having jurisdiction.

(3) Continue to exercise jurisdiction after considering all of the following:

(A) The extent to which the conservatee or proposed conservatee and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction.

(B) Whether it is a more appropriate forum than the court of any other state under the factors set forth in subdivision (c) of Section 1996.

(C) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of Section 1993.

(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, 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.

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.

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

Background from Uniform Act

This section is similar to … Section 208 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997). Like the UCCJEA, this Act does not attempt to define "unjustifiable conduct," concluding that this issue is best left to the courts. However, a common example could include the unauthorized removal of an adult to another state, with that state acquiring emergency jurisdiction under Section [1994] immediately upon the move and home state jurisdiction under Section [1993] six months following the move if a [conservatorship petition] is not filed during the interim in the soon-to-be former home state. Although child custody cases frequently raise different issues than [conservatorships], the element of unauthorized removal is encountered in both types of proceedings. For the caselaw on unjustifiable conduct under the predecessor Uniform Child Custody Jurisdiction Act (1968), see David Carl Minneman, *Parties' Misconduct as Grounds for Declining Jurisdiction Under § 8 of the Uniform Child Custody Jurisdiction Act (UCCJA)*, 16 A.L.R. 5th 650 (1993).

[Subdivision] (a) gives the court authority to fashion an appropriate remedy when it has acquired jurisdiction because of unjustifiable conduct. The court may decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the [conservatee or proposed conservatee] or the protection of the … property [of the conservatee or proposed conservatee] or [to] prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering several specified factors. Under [subdivision] (a), the unjustifiable conduct need not have been committed by a party.

[Subdivision] (b) authorizes a court to assess costs and expenses, including attorney's fees, against a party whose unjustifiable conduct caused the court to acquire jurisdiction. [Subdivision] (b) applies only if the unjustifiable conduct was committed by a party and allows for costs and expenses to be assessed only against that party. Similar to Section 208 of the UCCJEA, the court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 207.]

§ 1998. Notice of proceeding [UAGPPJA § 208]

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, 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.

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 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.

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

Background from Uniform Act

While this Act tries not to interfere with a state's underlying substantive law on [conservatorship] proceedings, the issue of notice is fundamental. Under this section, when a proceeding is brought other than in the [proposed conservatee's] home state, the petitioner must give notice in the method provided under local law not only to those entitled to notice under local law but also to the persons required to be notified were the proceeding brought in the [proposed conservatee's] home state. Frequently, the respective lists of persons to be notified will be the same. But where the lists are different, notice under this section will assure that someone with a right to assert that the home state has a primary right to jurisdiction will have the opportunity to make that assertion.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 208.]

§ 1999. Proceedings in more than one state [UAGPPJA § 209]

1999. Except for a petition for the appointment of a conservator under paragraph (1) or paragraph (2) of subdivision (a) of Section 1994, if a petition for the appointment of a conservator is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(a) If the court in this state has jurisdiction under Section 1993, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to Section 1993 before the appointment.

(b) If the court in this state does not have jurisdiction under Section 1993, whether at the time the petition is filed or at any time before the appointment, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum.

Comment. Section 1999 is similar to Section 209 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.

Background from Uniform Act

Similar to Section 206 of the Uniform Child Custody Jurisdiction and Enforcement Act (1997), this section addresses the issue of which court has the right to proceed when proceedings for the same [proposed conservatee] are brought in more than one state. The provisions of this section, however, have been tailored to the needs of [conservatorship] proceedings and the particular jurisdictional provisions of this Act. Emergency [conservatorship] appointments [Section 1994(a)(1)] and [conservatorships] with respect to property in other states [Section 1994(a)(2)] are excluded from this section because the need for dual appointments is frequent in these cases; for example, a petition will be brought in the [proposed conservatee's] home state but emergency action will be necessary in the place where the [proposed conservatee] is temporarily located, or a petition for the appointment of a [conservator of the estate] will be brought in the [proposed

conservatee's] home state but real estate located in some other state needs to be brought under management.

Under the Act only one court in which a petition is pending will have jurisdiction under Section [1993]. If a petition is brought in the [proposed conservatee's] home state, that court has jurisdiction over that of any significant-connection or other state. If the petition is first brought in a significant-connection state, that jurisdiction will be lost if a petition is later brought in the home state prior to an appointment …. Jurisdiction will also be lost in the significant-connection state if the [proposed conservatee] has a home state and an objection is filed in the significant-connection state that jurisdiction is properly in the home state. If petitions are brought in two significant-connection states, the first state has a right to proceed over that of the second state, and if a petition is brought in any other state, any claim to jurisdiction of that state is subordinate to that of the home state and all significant-connection states.

Under this section, if the court has jurisdiction under Section [1993], it has the right to proceed unless a court of another state acquires jurisdiction prior to the first court making an appointment …. If the court does not have jurisdiction under Section [1993], it must defer to the court with jurisdiction unless that court determines that the court in this state is the more appropriate forum and it thereby acquires jurisdiction. While the rules are straightforward, factual issues can arise as to which state is the home state or significant-connection state. Consequently, while under Section [1993] there will almost always be a court having jurisdiction to proceed, reliance on the communication, court cooperation, and evidence gathering provisions of Sections [1984-1986] will sometimes be necessary to determine which court that might be.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 209.]

Article 3. Transfer of Conservatorship

Background from Uniform Act

While this article consists of two separate sections, they are part of one integrated procedure. Article 3 authorizes a … conservator to petition the court to transfer the … conservatorship proceeding to a court of another state. Such a transfer is often appropriate when the [conservatee] has moved or has been placed in a facility in another state, making it impossible for the original court to adequately monitor the proceeding. Article 3 authorizes a transfer of a [conservatorship of the person, a conservatorship of the estate], or both. There is no requirement that both categories of proceeding be administered in the same state.

Section [2001] addresses procedures in the transferring state. Section [2002] addresses procedures in the accepting state.

A transfer begins with the filing of a petition by the conservator as provided in Section [2001(a)].… Assuming the court in the transferring state is satisfied that the grounds for transfer stated in Section [2001(d) (conservatorship of the person)] or [2001(e) (conservatorship of the estate)] have been met, one of which is that the court is satisfied that the court in the other state will accept the case, the court must issue a provisional order approving the transfer. The transferring court will not issue a final order dismissing the case until, as provided in Section [2001(f)], it receives a copy of the provisional order from the accepting court accepting the transferred proceeding.

Following issuance of the provisional order by the transferring court, a petition must be filed in the accepting court as provided in Section [2002(a)].… The court [may not issue] a provisional order accepting the case [if] it is established that the transfer would be contrary to the … conservatee's interests …. Section [2002(d)]. The term "interests" as opposed to "best interests" was chosen because of the strong autonomy values in modern [conservatorship] law. Should the court decline the transfer petition, it may consider a separately brought petition for the appointment of a [conservator] only if the court has a basis for jurisdiction under Sections [1993 or 1994] other than by reason of the provisional order of transfer. Section [2002(h)].

….Pursuant to Section [2001(f)], the provisional order from the accepting court must be filed in the transferring court. The transferring court will then issue a final order terminating the

proceeding, subject to local requirements such as filing of a final report or account and the release of any bond. Pursuant to Section [2002(e)], the final order terminating the proceeding in the transferring court must then be filed in the accepting court, which will then convert its provisional order accepting the case into a final order appointing the petitioning … conservator as … conservator in the accepting state.

Because … conservatorship law and practice will likely differ between the two states, the court in the accepting state must within 90 days after issuance of a final order determine whether the … conservatorship needs to be modified to conform to the law of the accepting state. Section [2002(f)]. The number "90" is placed in brackets to encourage states to coordinate this time limit with the time limits for other required filings such as … conservatorship plans. This initial period in the accepting state is also an appropriate time to change the … conservator if there is a more appropriate person to act as … conservator in the accepting state. The drafters specifically did not try to design the procedures in Article 3 for the difficult problems that can arise in connection with a transfer when the … conservator is ineligible to act in the second state, a circumstance that can occur when a financial institution is acting as [conservator of the estate] or a government agency is acting as [conservator of the person]. Rather, the procedures in Article 3 are designed for the typical case where the … conservator is legally eligible to act in the second state. Should that particular … conservator not be the best person to act in the accepting state, a change of … conservator can be initiated once the transfer has been secured.

The transfer procedure in this article responds to numerous problems that have arisen in connection with attempted transfers under the existing law of most states. Sometimes a court will dismiss a case on the assumption a proceeding will be brought in another state, but such proceeding is never filed. Sometimes a court will refuse to dismiss a case until the court in the other state accepts the matter, but the court in the other state refuses to consider the petition until the already existing … conservatorship has been terminated. Oftentimes the court will conclude that it is without jurisdiction to make an appointment until the [conservatee] is physically present in the state, a problem which Section [1994(a)(3)] addresses by granting a court special jurisdiction to consider a petition to accept a proceeding from another state. But the most serious problem is the need to prove the case in the second state from scratch, including proving the [conservatee's] incapacity and the choice of … conservator. Article 3 eliminates this problem.…

[Adapted from the Uniform Law Commission's General Comment to Article 3 of UAGPPJA.]

§ 2001. Transfer of conservatorship to another state [UAGPPJA § 301]

2001. (a) A conservator appointed in this state may petition the court to transfer the conservatorship to another state.

(b) 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.

(c) The court shall hold a hearing on a petition filed pursuant to subdivision (a).

(d) The court shall issue an order provisionally granting a petition to transfer a conservatorship of the person, and shall direct the conservator of the person to petition for a conservatorship of the person in the other state, if the court is satisfied that the conservatorship of the person will be accepted by the court in the other state and the court finds all of the following:

(1) The conservatee is physically present in or is reasonably expected to move permanently to the other state.

(2) An objection to the transfer has not been made or, if an objection has been made, the court determines that the transfer would not be contrary to the interests of the conservatee.

(3) Plans for care and services for the conservatee in the other state are reasonable and sufficient.

(e) The court shall issue a provisional order granting a petition to transfer a conservatorship of the estate, and shall direct the conservator of the estate to petition for a conservatorship of the estate in the other state, if the court is satisfied that the conservatorship will be accepted by the court of the other state and the court finds all of the following:

(1) The conservatee is physically present in or is reasonably expected to move permanently to the other state, or the conservatee has a significant connection to the other state considering the factors in subdivision (b) of Section 1991.

(2) An objection to the transfer has not been made or, if an objection has been made, the court determines that the transfer would not be contrary to the interests of the conservatee.

(3) Adequate arrangements will be made for management of the conservatee's property.

(f) The court shall issue a provisional order granting a petition to transfer a conservatorship of the person and estate, and shall direct the conservator to petition for a similar conservatorship in the other state, if the requirements of subdivision (d) and the requirements of subdivision (e) are both satisfied.

(g) The court shall issue a final order confirming the transfer and terminating the conservatorship upon its receipt of both of the following:

(1) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to Section 2002.

(2) The documents required to terminate a conservatorship in this state, including, but not limited to, any required accounting.

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 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.

Subdivision (a) corresponds to Section 301(a) of UAGPPJA.

Subdivision (b) corresponds to Section 301(b) of UAGPPJA. Revisions have been made 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) corresponds to Section 301(c) of UAGPPJA, but a hearing under subdivision (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place the matter on the consent calendar. A similar requirement applies when a conservator seeks to establish an out-of-state residence for a conservatee without petitioning for a transfer of the conservatorship. See Section 2353(c); Cal. R. Ct. 7.1063(f).

Subdivision (d) corresponds to Section 301(d) of UAGPPJA, but modifies the procedure that applies if a person objects to transfer of a conservatorship of the person. In that circumstance, the objector does not bear the burden of establishing that the transfer would be contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(2) is satisfied only if the court determines that the transfer would not be contrary to the interests of the conservatee.

Subdivision (e) corresponds to Section 301(e) of UAGPPJA, but modifies the procedure that applies if a person objects to transfer of a conservatorship of the estate. In that circumstance, the objector does not bear the burden of establishing that the transfer would be contrary to the interests of the conservatee. Rather, the requirement of paragraph (e)(2) is satisfied only if the court determines that the transfer would not be contrary to the interests of the conservatee.

Subdivision (f) provides guidance on the transfer requirements applicable to a conservatorship of the person and estate.

Subdivision (g) corresponds to Section 301(f) of UAGPPJA. If a conservatorship is transferred from California to another state, the conservator must continue to comply with California law until the court issues a final order confirming the transfer and terminating the conservatorship. See Section 2300 (oath & bond).

☞ **Note.** Under Section 301(d)(2) of UAGPPJA, if a person objects to a transfer, the court must find that "*the objector has not established* that the transfer would be contrary to the interests of the incapacitated person ...." (Emphasis added.) Section 301(e)(2) of UAGPPJA is similar.

In contrast, proposed Section 2001(d)(2) would require the court to determine that the transfer would not be contrary to the interests of the conservatee. Proposed Section 2001(e)(2) is similar.

The Commission seeks comment on any aspect of proposed Section 2001, but would especially appreciate input on which standard it should use in paragraphs (d)(2) and (e)(2).

§ 2002. Accepting conservatorship transferred from another state [UAGPPJA § 302]

2002. (a)(1) To confirm transfer of a conservatorship transferred to this state under provisions similar to Section 2001, the conservator must petition the court in this state to accept the conservatorship.

(2) The petition must include a certified copy of the other state's provisional order of transfer.

(3) The first page of the petition must state that the conservatee is not a minor or an adult with a developmental disability. The first page of the petition must also state that the conservatee is not receiving involuntary mental health treatment and there are no plans for the conservatee to receive involuntary mental health treatment after transfer of the conservatorship.

(b) 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 notice must be given in the same manner as notice is required to be given in this state.

(c)(1) The court shall hold a hearing on a petition filed pursuant to subdivision (a).

(2) Before the hearing under paragraph (1), the court shall gather sufficient information to permit the judge to determine whether the requirements of subdivision (d) are satisfied.

(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 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.

(e)(1) The court shall issue a final order accepting the proceeding and appointing the conservator as a conservator of the person, a conservator of the estate, or a conservator of the person and estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to Section 2001 transferring the proceeding to this state. In appointing a conservator under this paragraph, the court shall comply with Sections 1830 and 1835.

(2) A transfer to this state does not become effective unless and until the court issues a final order under paragraph (1). A conservator may not take action in this state pursuant to a transfer petition unless and until the transfer becomes effective.

(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.

(4) When it issues a final order under paragraph (1), the court shall appoint a court investigator under Section 1454, who shall promptly commence an investigation under Section 1851.1.

(f)(1) Not later than [90] days after issuance of a final order accepting transfer of a conservatorship, the court shall determine whether the conservatorship needs to be modified to conform to the law of this state. The court may make take any step necessary to achieve compliance with the law of this state, including, but not limited to, striking or modifying any conservator powers that are not permitted under the law of this state.

(2) At the same time that it makes the determination required by paragraph (1), the court shall review the conservatorship as provided in Section 1851.1.

(g) Except as otherwise provided by Sections 1851.1 and 2650, Chapter 3 (commencing with Section 1860), and other law, when the court grants a petition under this section, the court shall recognize a conservatorship order from the other state, including the determination of the conservatee's incapacity and the appointment of the conservator.

(h) The denial by a court of this state of a petition to accept a conservatorship transferred from another state does not affect the ability of the conservator to seek appointment as conservator in this state under Chapter 1 (commencing with Section 1800) of Part 3 if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

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.

Paragraphs (1) and (2) of subdivision (a) correspond to Section 302(a) of UAGPPJA. Paragraph (3) of subdivision (a) serves to facilitate compliance with Section 1981 (scope of chapter).

Subdivision (b) corresponds to Section 302(b) of UAGPPJA. Revisions have been made 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*.

Paragraph (1) of subdivision (c) corresponds to Section 302(c) of UAGPPJA, but a hearing under subdivision (c) is mandatory in every case. If there is no opposition to a transfer petition, the court may place the matter on the consent calendar.

Paragraph (2) of subdivision (c) directs the court to conduct a preliminary investigation before provisionally granting a petition to transfer a conservatorship to California. The scope of this investigation is limited because it may be difficult to obtain information about the conservatorship while the conservatee, the conservator, or both are located in another state. A more extensive investigation is required later. See subdivisions (e) & (f).

Paragraph (1) of subdivision (d) corresponds to Section 302(d)(1) of UAGPPJA, but modifies the procedure that applies if a person objects to transfer of a conservatorship of the person. In that circumstance, the objector does not bear the burden of establishing that the transfer would be contrary to the interests of the conservatee. Rather, the requirement of paragraph (d)(1) is satisfied only if the court determines that the transfer would not be contrary to the interests of the conservatee.

Paragraphs (2) and (3) of subdivision (d) correspond to Section 302(d)(2) of UAGPPJA. Revisions have been made to differentiate between: (1) a conservator who is ineligible, *under the law of the transferring state,* to serve in California (e.g., a public guardian who, under the law of another jurisdiction, is only authorized to act in that jurisdiction) and (2) a conservator who is ineligible, *under California law,* to serve in California. In the former situation, paragraph (d)(2) precludes the California court from provisionally granting the transfer. If the proceeding is to be transferred to California, the transferring court must first replace the existing conservator with one who would be authorized to act beyond the boundaries of the transferring state. In contrast, if the existing conservator is ineligible due to California law, the transfer can proceed so long as the transfer petition identifies a replacement who is willing and eligible to serve in California. See paragraph (d)(3).

Paragraph (4) of subdivision (d) is necessary to reflect the limitations on the scope of this chapter. See Section 1981 & Comment (scope of chapter).

Paragraph (1) of subdivision (e) corresponds to Section 302(e) of UAGPPJA. A second sentence is included to make clear that (1) a final order accepting a proceeding and appointing the conservator to serve in California must meet the same requirements as an order appointing a conservator in a proceeding that originates in California, and (2) a court must provide the same written information to the conservator of a transferred conservatorship that it provides to the conservator of a conservatorship that originates in California.

Paragraph (2) of subdivision (e) makes clear that a transfer to California does not become effective until the California court enters a final order accepting the conservatorship and appointing the conservator in California. Absent some other source of authority (e.g., registration of the conservatorship under Article 4), the conservator cannot begin to function here as such until the transfer becomes effective.

Paragraph (3) of subdivision (e) underscores that once a conservatorship is transferred to California, it is henceforth subject to California law and will be treated as a California conservatorship. For example, if a conservatorship is transferred to California and the conservator wishes to exercise the powers specified in Section 2356.5 (conservatee with dementia), the requirements of that section must be satisfied.

Paragraph (4) of subdivision (e) directs the court to appoint a court investigator at the same time that it issues a final order accepting transfer of a conservatorship. The court investigator must promptly conduct an investigation similar to the investigation for establishing a new conservatorship in California. See Section 1851.1 (investigation & review of transferred conservatorship).

Paragraph (1) of subdivision (f) corresponds to Section 302(f) of UAGPPJA, but includes an additional sentence that expressly authorizes the court to take any steps necessary to conform a conservatorship to California law, including elimination or reduction of the conservator's powers.

Paragraph (2) of subdivision (f) directs the court to review the conservatorship at the same time that it determines whether the conservatorship "needs to be modified to conform to the law of this state" under paragraph (1) of subdivision (f). For details of this review process, see Section 1851.1 (investigation & review of transferred conservatorship).

Subdivision (g) corresponds to Section 302(g) of UAGPPJA, but there are limitations on the comity accorded to the transferring court's determination of capacity and choice of conservator. See Sections 1851.1 (investigation & review of transferred conservatorship), 1860-1865 (termination of conservatorship), 2650 (grounds for removal).

Subdivision (h) corresponds to Section 302(h) of UAGPPJA.

☞ **Note.** Under Section 301(d)(1) of UAGPPJA, if a person objects to a transfer, the court must find that "*the objector has not established* that the transfer would be contrary to the interests of the incapacitated person …." (Emphasis added.) In contrast, proposed Section 2002(d)(1) would require the court to determine that the transfer would not be contrary to the interests of the conservatee. The Commission seeks comment on any aspect of proposed Section 2002, but would especially appreciate input on which standard it should use in paragraph (d)(1).

Article 4. Registration and Recognition of Orders from Other States

Background from Uniform Act

Article 4 is designed to facilitate the enforcement of [conservatorship] orders in other states. This article does not make distinctions among the types of orders that can be enforced.… While some states have expedited procedures for sales of real estate by [a conservator of the estate] appointed in [another state], few states have enacted statutes dealing with enforcement of [an order appointing a conservator of the person], such as when a care facility questions the authority of a [conservator of the person] appointed in another state. Sometimes, these sorts of refusals necessitate that the proceeding be transferred to the other state or that an entirely new petition be filed, problems that could often be avoided if [conservatorship] orders were entitled to recognition in other states.

Article 4 provides for such recognition. The key concept is registration. Section [2011] provides for registration of [an order appointing a conservator of the person], and Section [2012] for registration of [an order appointing a conservator of the estate]. Following registration of the order in the appropriate county of the other state, and after giving notice to the [supervising] court of the intent to register the order in the other state, Section [2014] authorizes the … conservator to thereafter exercise all powers authorized in the order of appointment except as prohibited under the laws of the registering state.

The drafters of the Act concluded that the registration of certified copies provides sufficient protection and that it was not necessary to mandate the filing of authenticated copies.

[Adapted from the Uniform Law Commission's General Comment to Article 4 of UAGPPJA.]

§ 2011. Registration of order appointing conservator of person [UAGPPJA § 401]

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, may register the conservatorship order in this state by filing certified copies of the order and letters of office, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state.

Comment. 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 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).

For the effect of a registration under this section, see Section 2014 (effect of registration). For the applicable filing fee, see Gov't Code § 70626 (fee for miscellaneous services). For recordation with a county recorder, see Section 2016 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

§ 2012. Registration of order appointing conservator of estate [UAGPPJA § 402]

2012. If a conservator of the estate has been appointed in another state and a petition for a conservatorship of the estate is not pending in this state, the conservator appointed in the other state, after notifying the court supervising the conservatorship of an intent to register, may register the conservatorship order in this state by filing certified copies of the order and letters of office and of any bond, together with a cover sheet approved by the Judicial Council, in the superior court of any county of this state in which property belonging to the conservatee is located.

Comment. Section 2012 is similar to Section 402 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 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).

For the effect of a registration under this section, see Section 2014 (effect of registration). For the applicable filing fee, see Gov't Code § 70626 (fee for miscellaneous services). For recordation with a county recorder, see Section 2016 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

§ 2013. Registration of order appointing conservator of person and estate

2013. If a conservator of the person and estate has been appointed in another state and a petition for a conservatorship of the person, conservatorship of the estate, or conservatorship of the person and estate is not pending in this state, the conservator appointed in the other state, after notifying the court supervising the conservatorship of an intent to register, may register the conservatorship order in this state by filing certified copies of the order and letters of office and of any bond, together with a cover sheet approved by the Judicial Council, in the superior court of any appropriate county of this state.

Comment. Section 2013 is included for the sake of completeness. It serves to clarify the registration procedure applicable to a conservatorship of the person and estate.

For the effect of a registration under this section, see Section 2014 (effect of registration). For the applicable filing fee, see Gov't Code § 70626 (fee for miscellaneous services). For recordation with a county recorder, see Section 2016 (recordation of registration documents). For guidance regarding third party reliance on a conservatorship order registered under this section, see Section 2015 (good faith reliance on registration). For limitations on the scope of this chapter, see Section 1981 & Comment.

See Section 1982 (definitions).

§ 2014. Effect of registration [UAGPPJA § 403]

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.

(b) 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 also been made to:

(1) Conform to California terminology for the proceedings in question. See Section 1982 & Comment (definitions); see also Section 1980 Comment.

(2) 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.

(3) 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.

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

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

§ 2015. Good faith reliance on registration

2015. (a) A third person who acts in good faith reliance on a conservatorship order registered under this article is not liable to any person for so acting if all of the following requirements are satisfied:

(1) The conservator presents to the third person a file-stamped copy of the registration documents required by Section 2011, 2012, or 2013, including, but not limited to, the certified copy of the conservatorship order.

(2) Each of the registration documents, including, but not limited to, the conservatorship order and the file-stamped cover sheet, appears on its face to be valid.

(3) The conservator presents to the third person a form approved by the Judicial Council, in which the conservator attests that the conservatee does not reside in

this state and the conservator promises to promptly notify the third person if the conservatee becomes a resident of this state.

(4) The third person has not received any actual notice that the conservatee is residing in this state.

(b) Nothing in this section is intended to create an implication that a third person is liable for acting in reliance on a conservatorship order registered under this article under circumstances where the requirements of subdivision (a) are not satisfied. Nothing in this section affects any immunity that may otherwise exist apart from this section.

Comment. Section 2015 is modeled on Section 4303 (good faith reliance on power of attorney).

§ 2016. Recordation of registration documents

2016. (a) A file-stamped copy of the registration documents required by this Section 2011, 2012, or 2013 may be recorded in the office of any county recorder in this state.

(b) A county recorder may charge a reasonable fee for recordation under subdivision (a).

Comment. Section 2016 makes clear that registration documents under this chapter are recordable in county property records.

Article 5. Miscellaneous Provisions

§ 2111. Uniformity of application and construction [UAGPPJA § 501]

2111. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it, consistent with the need to protect individual civil rights and in accordance with due process.

Comment. Section 2111 is similar to Section 501 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). A clause has been added to underscore the importance of protecting a conservatee's civil rights, particularly the constitutional right of due process, which is deeply implicated in conservatorship proceedings. See U.S. Const. amend. XIV; Cal. Const. art. I, §§ 7, 15; see also 2012 Conn. Pub. Act. No. 12-22, § 22.

§ 2112. Relationship to Electronic Signatures in Global and National Commerce Act [UAGPPJA § 502]

2112. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, Title 15 (commencing with Section 7001) of the United States Code, but does not modify, limit, or supersede subdivision (c) of Section 101 of that act, which is codified as subdivision (c) of Section 7001 of Title 15 of the United States Code, or authorize electronic delivery of any of the notices described in subdivision (b) of Section 103 of that

act, which is codified as subdivision (b) of Section 7003 of Title 15 of the United States Code.

Comment. Section 2112 is similar to Section 502 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to conform to local drafting practices.

§ 2113. Court rules and forms

2113. (a) On or before January 1, 2016, the Judicial Council shall develop court rules and forms as necessary for the implementation of this chapter.

(b) The materials developed pursuant to this section shall include, but not be limited to, both of the following:

(1) A cover sheet for registration of a conservatorship under Section 2011, 2012, or 2013. The cover sheet shall explain that a proceeding may not be registered under Section 2011, 2012, or 2013 if the proceeding relates to a minor or an adult with a developmental disability. The cover sheet shall further explain that a proceeding in which a person is subjected to involuntary mental health care may not be registered under Section 2011, 2012, or 2013. The cover sheet shall require the conservator to initial each of these explanations. The cover sheet shall also include a prominent statement that the conservator of a conservatorship registered under Section 2011, 2012, or 2013 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. Directly beneath this statement, the cover sheet shall include a signature box in which the conservatee attests to these matters.

(2) The form required by paragraph (3) of subdivision (a) of Section 2015. If the Judicial Council deems it advisable, this form may be included in the civil cover sheet developed under paragraph (1).

Comment. Section 2113 directs the Judicial Council to prepare any court rules and forms that are necessary to implement this chapter before it becomes operative.

☞ **Note.** In drafting proposed Section 2113, the Commission assumed that its proposed UAGPPJA legislation would be introduced and enacted in 2014, but the bulk of it would not become operative until January 1, 2016 (i.e., the normal operative date would be delayed by one year, except the operative date of this section). The delayed operative date would be specified in an uncodified section (see below). The one-year delay would give the Judicial Council time to prepare court rules and forms to implement the legislation, as required by proposed Section 2113. If the proposed legislation is not enacted in 2014, the operative dates will require adjustment.

§ 2114. Transitional provision [UAGPPJA § 504]

2114. (a) This chapter applies to conservatorship proceedings begun on or after January 1, 2016.

(b) Articles 1, 3, and 4 and Sections 2111 and 2112 apply to proceedings begun before January 1, 2016, regardless of whether a conservatorship order has been issued.

Comment. Section 2114 is similar to Section 504 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.

Background from Uniform Act

This Act applies retroactively to … conservatorships in existence on the effective date. The … conservator appointed prior to the [operative] date of the Act may petition to transfer the proceeding to another state under Article 3 and register and enforce the order in other states pursuant to Article 4. The jurisdictional provisions of Article 2 also apply to proceedings begun on or after the [operative] date. What the Act does not do is change the jurisdictional rules midstream for petitions filed prior to the effective date for which an appointment has not been made … as of the effective date. Jurisdiction in such cases is governed by prior law. Nor does the Act affect the validity of already existing appointments even though the court might not have had jurisdiction had this Act been [operative] at the time the appointment was made.

[Adapted from the Uniform Law Commission's Comment to UAGPPJA § 504.]

☞ **Note.** In drafting proposed Section 2114, the Commission assumed that its proposed UAGPPJA legislation would be introduced and enacted in 2014, but the bulk of it would not become operative until January 1, 2016 (i.e., the normal operative date would be delayed by one year, except the operative date of this section). The delayed operative date would be specified in an uncodified section (see below). The one-year delay would give the Judicial Council time to prepare court rules and forms to implement the legislation, as required by proposed Section 2113. If the proposed legislation is not enacted in 2014, the operative dates will require adjustment.

UNCODIFIED

Operative date [UAGPPJA § 505]

SEC. ____. (a) Section 2113 of the Probate Code, as added by this act, becomes operative on January 1, 2015.

(b) The remainder of this act becomes operative on January 1, 2016.

Comment. This uncodified section is similar to Section 505 of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (2007) ("UAGPPJA"). Revisions have been made to (1) conform to California usage of the terms "effective date" and "operative date," and (2) give the Judicial Council time to prepare court rules and forms as required by Section 2113.

☞ **Note.** In drafting this uncodified section, the Commission assumed that its proposed UAGPPJA legislation would be introduced and enacted in 2014. If the proposed legislation is not enacted in 2014, the operative dates will require adjustment.

KEY CONFORMING REVISIONS

Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) (amended). Fees for miscellaneous services

SEC. ____. Section 70626 of the Government Code, as amended by Section 45 of Chapter 41 of the Statutes of 2012, is amended to read:

70626. (a) The fee for each of the following services is twenty-five dollars ($25). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is thirty dollars ($30). Subject to subdivision (e), amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.

~~(10)~~ (11) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars ($80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) The fee for delivering a will to the clerk of the superior court in which the estate of a decedent may be administered, as required by Section 8200 of the Probate Code, is fifty dollars ($50).

(e) From July 1, 2011, to June 30, 2017, inclusive, ten dollars ($10) of each fee collected pursuant to subdivisions (a) and (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.

(f) This section shall become inoperative on July 1, 2017, and, as of January 1, 2018, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2018, deletes or extends the dates on which it becomes inoperative and is repealed.

Comment. Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 45) is amended to specify the fee for registering a conservatorship order from another jurisdiction under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Gov't Code § 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) (amended). Fees for miscellaneous services

SEC. ____. Section 70626 of the Government Code, as amended by Section 46 of Chapter 41 of the Statutes of 2012, is amended to read:

70626. (a) The fee for each of the following services is fifteen dollars ($15). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing a writ of attachment, a writ of mandate, a writ of execution, a writ of sale, a writ of possession, a writ of prohibition, or any other writ for the enforcement of any order or judgment.

(2) Issuing an abstract of judgment.

(3) Issuing a certificate of satisfaction of judgment under Section 724.100 of the Code of Civil Procedure.

(4) Certifying a copy of any paper, record, or proceeding on file in the office of the clerk of any court.

(5) Taking an affidavit, except in criminal cases or adoption proceedings.

(6) Acknowledgment of any deed or other instrument, including the certificate.

(7) Recording or registering any license or certificate, or issuing any certificate in connection with a license, required by law, for which a charge is not otherwise prescribed.

(8) Issuing any certificate for which the fee is not otherwise fixed.

(b) The fee for each of the following services is twenty dollars ($20). Amounts collected shall be distributed to the Trial Court Trust Fund under Section 68085.1.

(1) Issuing an order of sale.

(2) Receiving and filing an abstract of judgment rendered by a judge of another court and subsequent services based on it, unless the abstract of judgment is filed under Section 704.750 or 708.160 of the Code of Civil Procedure.

(3) Filing a confession of judgment under Section 1134 of the Code of Civil Procedure.

(4) Filing an application for renewal of judgment under Section 683.150 of the Code of Civil Procedure.

(5) Issuing a commission to take a deposition in another state or place under Section 2026.010 of the Code of Civil Procedure, or issuing a subpoena under Section 2029.300 to take a deposition in this state for purposes of a proceeding pending in another jurisdiction.

(6) Filing and entering an award under the Workers' Compensation Law (Division 4 (commencing with Section 3200) of the Labor Code).

(7) Filing an affidavit of publication of notice of dissolution of partnership.

(8) Filing an appeal of a determination whether a dog is potentially dangerous or vicious under Section 31622 of the Food and Agricultural Code.

(9) Filing an affidavit under Section 13200 of the Probate Code, together with the issuance of one certified copy of the affidavit under Section 13202 of the Probate Code.

(10) Registering a conservatorship under Article 4 (commencing with Section 2011) of Chapter 8 of Part 3 of Division 4 of the Probate Code.

~~(10)~~ (11) Filing and indexing all papers for which a charge is not elsewhere provided, other than papers filed in actions or special proceedings, official bonds, or certificates of appointment.

(c) The fee for filing a first petition under Section 2029.600 or 2029.620 of the Code of Civil Procedure, if the petitioner is not a party to the out-of-state case, is eighty dollars ($80). Amounts collected shall be distributed to the Trial Court Trust Fund pursuant to Section 68085.1.

(d) The fee for delivering a will to the clerk of the superior court in which the estate of a decedent may be administered, as required by Section 8200 of the Probate Code, is fifty dollars ($50).

(e) This section shall become operative on July 1, 2017.

Comment. Section 70626 (as amended by 2012 Cal. Stat. ch. 41, § 46) is amended to specify the fee for registering a conservatorship order from another jurisdiction under the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*).

Prob. Code § 1834 (amended). Conservator's acknowledgment of receipt

SEC. ____. Section 1834 of the Probate Code is amended to read:

1834. (a) Before letters are issued in a conservatorship that originates in this state or a conservatorship that is transferred to this state under Chapter 8 (commencing with Section 1980), the conservator (other than a trust company or a public conservator) shall file an acknowledgment of receipt of (1) a statement of duties and liabilities of the office of conservator, and (2) a copy of the

conservatorship information required under Section 1835. The acknowledgment and the statement shall be in the form prescribed by the Judicial Council.

(b) The court may by local rules require the acknowledgment of receipt to include the conservator's birth date and driver's license number, if any, provided that the court ensures their confidentiality.

(c)The statement of duties and liabilities prescribed by the Judicial Council shall not supersede the law on which the statement is based.

Comment. Section 1834 is amended to make clear that it applies to a conservatorship that is transferred to California under the California Conservatorship Jurisdiction Act, as well as one that originates in California.

Prob. Code § 1851.1 (added). Investigation and review of transferred conservatorship

SEC. ____. Section 1851.1 is added to the Probate Code, to read:

1851.1. (a) When a court investigator is appointed pursuant to Section 2002, the investigator shall promptly commence an investigation of the transferred conservatorship.

(b) In conducting an investigation and preparing a report under this section, the court investigator shall do all of the following:

(1) Comply with the requirements of Section 1851.

(2) Conduct an interview of the conservator.

(3) Conduct an interview of the conservatee's spouse or registered domestic partner, if any.

(4) Inform the conservatee of the nature, purpose, and effect of the conservatorship.

(5) Inform the conservatee and all other persons entitled to notice under subdivision (b) of Section 2002 of the right to seek termination of the conservatorship.

(6) Determine whether the conservatee objects to the conservator or prefers another person to act as conservator.

(7) Inform the conservatee of the right to attend the hearing under subdivision (c).

(8) Determine whether it appears that the conservatee is unable to attend the hearing and, if able to attend, whether the conservatee is willing to attend the hearing.

(9) Inform the conservatee of the right to be represented by legal counsel if the conservatee so chooses, and to have legal counsel appointed by the court if the conservatee is unable to retain legal counsel.

(10) Determine whether the conservatee wishes to be represented by legal counsel and, if so, whether the conservatee has retained legal counsel and, if not, the name of an attorney the conservatee wishes to retain.

(11) If the conservatee has not retained legal counsel, determine whether the conservatee desires the court to appoint legal counsel.

(12) Determine whether the appointment of legal counsel would be helpful to the resolution of the matter or is necessary to protect the interests of the conservatee in any case where the conservatee does not plan to retain legal counsel and has not requested the appointment of legal counsel by the court.

(13) Consider each of the categories specified in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 1821.

(14) Consider, to the extent practicable, whether the investigator believes the conservatee suffers from any of the mental function deficits listed in subdivision (a) of Section 811 that significantly impairs the conservatee's ability to understand and appreciate the consequences of the conservatee's actions in connection with any of the functions described in subdivision (a) or (b) of Section 1801 and identify the observations that support that belief.

(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.

(d) The court investigator's report under this section shall be confidential as provided in Section 1851.

(e) Except as provided in paragraph (2) of subdivision (a) of Section 1850, the court shall review the conservatorship again one year after the review conducted pursuant to subdivision (c), and annually thereafter, in the manner specified in Section 1850.

(f) The first time that the need for a conservatorship is challenged 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.

(g) If a duty described in this section is the same as a duty imposed pursuant to the amendments to Section 1826 or 1851 enacted by Chapter 493 of the Statutes of 2006, a superior court shall not be required to perform that duty until the Legislature makes an appropriation identified for this purpose.

Comment. Section 1851.1 is added to provide guidance on the nature of the investigation and review that is required when a conservatorship is transferred to California from another state under the California Conservatorship Jurisdiction Act (Section 1980 *et seq*.). In conducting a review under this section, the court investigator might be able to use some evidence or other resources from the proceeding that was transferred to California, particularly if the transferring court recently conducted a review of that proceeding.

The court investigator's fee for conducting an investigation under this section is to be paid in the same manner as if the conservatorship was originally established in California. See Section 1851.5 (assessment of conservatee for cost of conducting court investigation).

Prob. Code § 2300 (amended). Oath and bond

SEC. ____. Section 2300 of the Probate Code is amended to read:

2300. Before the appointment of a guardian or conservator is effective, including, but not limited to, the appointment of a conservator under Section 2002, the guardian or conservator shall:

(a) Take an oath to perform the duties of the office according to law~~, which~~. The oath obligates the guardian or conservator to comply with the law of this state, as well as other applicable law, at all times, in any location within or without the state. If the conservator petitions for transfer of the conservatorship to another state pursuant to Section 2001, the conservator shall continue to comply with the law of this state until the court issues a final order confirming the transfer and terminating the conservatorship pursuant to Section 2001. The oath shall be attached to or endorsed upon the letters.

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

Comment. Section 2300 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq.*), particularly Article 3 (transfer of conservatorship) and Article 4 (registration and recognition of orders from other states).

Prob. Code § 2650 (amended). Grounds for removal

SEC. ____. Section 2650 of the Probate Code is amended to read:

2650. A guardian or conservator may be removed for any of the following causes:

(a) Failure to use ordinary care and diligence in the management of the estate.

(b) Failure to file an inventory or an account within the time allowed by law or by court order.

(c) Continued failure to perform duties or incapacity to perform duties suitably.

(d) Conviction of a felony, whether before or after appointment as guardian or conservator.

(e) Gross immorality.

(f) Having such an interest adverse to the faithful performance of duties that there is an unreasonable risk that the guardian or conservator will fail faithfully to perform duties.

(g) In the case of a guardian of the person or a conservator of the person, acting in violation of any provision of Section 2356.

(h) In the case of a guardian of the estate or a conservator of the estate, insolvency or bankruptcy of the guardian or conservator.

(i) In the case of a conservator appointed by a court in another jurisdiction, removal because that person would not have been appointed in this state despite being eligible to serve under the law of this state.

~~(i)~~ (j) In any other case in which the court in its discretion determines that removal is in the best interests of the ward or conservatee; but, in considering the best interests of the ward, if the guardian was nominated under Section 1500 or 1501, the court shall take that fact into consideration.

Comment. Section 2650 is amended to reflect the enactment of the California Conservatorship Jurisdiction Act (Section 1980 *et seq*).
