UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

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The original Uniform Guardianship and Protective Proceedings Act (UGPPA), which dates back to 1969 but with revisions in 1982 and 1997, is a comprehensive act addressing all aspects of guardianships and protective proceedings for both minors and adults. The proposed Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) has a much narrower focus, dealing only with the matter of jurisdiction and related issues. The UAGPPJA had its first reading at the Commissioners' 2006 Annual Meeting. A final reading and possible approval is expected in Summer 2007.

Problems with Terminology

States differ on terminology for the person appointed by the court to handle the affairs of a minor or incapacitated adult. Under the UGPPA and in a majority of American states, a "guardian" is appointed to make personal care decisions for the ward. A "conservator" is appointed in a "protective proceeding" to manage the person's property. But in many states, only a "guardian" is appointed, either a guardian of the person or guardian of the estate. To further confuse things, in California and Connecticut, guardians of the person and estate are appointed for minors, and conservators of the person and estate are appointed for adults. This article and the UAGPPJA adopt the prevailing guardian/conservator distinction.

The Issue of Multiple Jurisdiction, Current Law and Its Problems

Because the US has 50 plus guardianship systems, problems of determining jurisdiction are frequent. Questions of which state has jurisdiction to appoint a guardian or conservator can arise between an American state and another country. But more frequently, problems arise because the individual has contacts with more than one American state.

In nearly all American states, a guardian may be appointed by a court in a state in which the individual is domiciled or is physically present. In nearly all American states, a conservator may be appointed by a court in a state in which the individual is domiciled or has property. Cases in which courts in more than one state have jurisdiction are increasing and no state has an effective mechanism for resolving jurisdictional disputes with other states. Sometimes these cases arise because the adult is physically located in or is moved to a state other than the adult's domicile. Sometimes the case arises because of uncertainty as to the adult's domicile, particularly if the adult owns a vacation home in another state.

The Problem of Transfer

Oftentimes, problems arise even absent a dispute. Even if everyone is agreed that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for transferring a proceeding to another state or for accepting such a transfer. In most states, all of the procedures for an original appointment must be repeated, a time consuming and expensive prospect.

The Problem of Court Cooperation and Full Faith and Credit

Should guardianship or conservatorship proceedings be instituted in more than one state, cooperation between the courts involved is essential. Unfortunately, such cooperation is rare. Guidance is needed on which court is to decide the question of jurisdiction and the standard that court is to apply.

The US Constitution generally requires that court orders in one state be honored in another state. But there are exceptions to the full faith and credit doctrine, of which guardianship and conservatorship law is one. Sometimes, guardianship and conservatorship proceedings must be initiated in a second state because of the difficulty of implementing a court order entered in another state.

The Proposed Uniform Law and the Child Custody Analogy

To address the above problems, the Uniform Law Conference in 2005 appointed a committee to draft a new uniform law, the result of which will be the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The work of this committee is expected to be completed in Summer 2007.

Similar problems of jurisdiction existed for many years in the US in connection with child custody determinations. If one parent lived in one state and the other parent lived in another state, frequently the courts in more that one state had jurisdiction to enter custody orders. Beginning in 1969, the Uniform Law Conference approved uniform acts to minimize the problem of multiple court jurisdiction in child custody matters. The current version of this model law is known as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). The drafters of the UAGPPJA have elected to model much of their Act after the child custody model law; however, the proposed UAGPPJA applies only to adult guardianship and protective proceedings. The UAGPPJA is limited to adults because nearly all jurisdictional issues involving guardianships for minors are subsumed by the UCCJEA.

The Objectives and Key Concepts of the Proposed UAGPPJA

The UAGPPJA is organized into five articles. Article 1 contains definitions and provisions designed to facilitate cooperation between courts in different states. Article 2 is the heart of the

Act, specifying which court has jurisdiction to appoint a guardian or conservator. Its overall objective is to limit jurisdiction to the courts of one and only one state except in cases of emergency or in situations where the individual owns property in multiple states. Article 3 specifies a procedure for transferring a guardianship or conservatorship case from one state to another. Article 4 deals with enforcement of guardianship and protective orders in other states. Article 5 contains boilerplate provisions common to all uniform acts.

Key Definitions (Section 103)

To determine which court has primary jurisdiction under the UAGPPJA, the key factors are to determine the individual's "home state" and "significant connection state." A "home state" is the state in which the individual was physically present for at least six consecutive months immediately before the commencement of the guardianship or protective proceeding (Section 103(7)). "Significant connection state," which is potentially broader concept, means the state in which the individual has a significant connection other than mere physical presence, and where substantial evidence concerning the individual is available (Section 103(16)).

Jurisdiction Concepts (Article 2)

Section 201 is the key provision governing jurisdiction, creating a three-level priority; the home state, followed by a significant connection state, followed by other jurisdictions:

- *Home State*: The home state has primary jurisdiction to appoint a guardian or conservator or enter another protective order, a priority that continues for up to six months following a move to another state.
- *Significant Connection State*: A significant connection state has jurisdiction if the individual does not have a home state or the home state has declined jurisdiction on the basis that the significant connection state is a more appropriate forum. To facilitate appointments in the average case where jurisdiction is not in dispute, a significant connection state also has jurisdiction if no proceeding has been commenced in the respondent's home state or another significant connection state, no objection to the court's jurisdiction has been filed, and the court concludes that it is a more appropriate forum than the court in another place.
- *Another Place*: A court in another state has jurisdiction if the home state and all significant connection states have declined jurisdiction or the individual does not have a home state or significant connection state.
- *Special Cases*: Regardless of whether it is a home state or significant connection state, a court in the state where the individual is physically present has jurisdiction to appoint an emergency guardian or to appoint a conservator or enter another protective order with respect to property located in the state.

The remainder of Article 2 elaborates on these core concepts. Once a court has jurisdiction, its jurisdiction continues until the proceeding is terminated or transferred (Section 201B). Section

202 authorizes a court to decline jurisdiction if it determines that the court of another state is a more appropriate forum, and Section 203 specifies the factors to be taken into account in making this determination. Section 204 authorizes a court to decline jurisdiction if jurisdiction was acquired because of unjustifiable conduct. Section 205 specifies a procedure for resolving jurisdictional issues if proceedings are pending in more than one state. The UAGPPJA also includes provisions regarding communication between courts in different states, taking testimony in another state, and specifying which court has jurisdiction to decide jurisdiction if proceedings have been commenced in more than one state (Sections 105-107).

Transfer to Another State (Article 3)

The UAGPPJA contains a procedure for transferring a proceeding to another state. To make the transfer, two court orders are necessary, one by the court giving up the case, and a second by the court in the other state that will be receiving the case. The court receiving the case must give full faith and credit to the order from the sending state, including the determination of the individual's incapacity and the identity of the guardian or conservator appointed.
The proposed UAGPPJA specifies the obligation of the transferring court and providing that courts transferring the case must find the following:

- The individual under guardianship will move permanently to another state;
- No objection to the transfer has been made of that if objection has been made, the objectants have not established that transfer of the proceeding would be contrary to the individual's interests;
- The court is satisfied that the plans for the individual in the new State are reasonable and sufficient; and
- The court is satisfied that the proceeding will be accepted by the court to which the guardian or conservator has indicated the proceeding will be transferred.

Out of State Enforcement (Article 4)

To facilitate enforcement of guardianship and conservatorship orders in other states, the UAGPPJA authorizes registration of the guardianship or protective order in other states. Upon registration, the guardian or conservator may exercise all powers authorized in the order except as prohibited by the laws of the other state. Upon registration, the order is entitled to full faith and credit in the other state.

The Act also addresses enforcement of international orders. Except to the extent the foreign order violates fundamental principles of human rights, a court of an American state that has enacted the Act must accept an order entered in another country to the same extent as if it were an order entered in another US state (Section 104).