REPORTER'S MINUTES OF THE FIRST MEETING OF THE DRAFTING COMMITTEE TO REVISE THE UGPPA

FAIRMONT HOTEL
CHICAGO, IL
APRIL 1-2, 2016

IN ATTENDANCE
(for all or part of the meeting)

David English (Chair)
Nina Kohn (Reporter)
Molly Ackerly
Wendy Cappelato
Ginny Casazza
Richard Cassidy
Cheryl Cessario
Robert ("Bob") Dinerstein
William Scott ("Scott") Donaldson
Marc Feinstein
Marty Ford
Kristin ("Kris") Booth Glen
Josie Gittler
Charles Golbert
Terry Hammond
Lyle Hillyard
Melissa Hortman
Sally Hurme
David Hutt
A. Frank Johns
Paul Kurtz
Greg MacKenzie
Diana Noel
Benjamin ("Ben") Orzeske
Anita Ramasastry
Sylvia Rudek
Catherine Seal
Lowry Snow
Michael Sconyers
Deborah ("Debbie") Tedford
Karen Washington
Linda Whitton
Erica Wood
Carleton Coleman

SUMMARY OF MEETING

After introductions, participants launched into a thoughtful discussion of the issues before them. This summary outlines the issues discussed and identifies how the revised draft Act will be further revised in light of the discussion.

1. Guardians' plans.
   The revised draft Act's proposed provisions governing guardians' plans were discussed. Per the discussion, for the next revision the Reporter will:
   - Include a requirement in Section 319 that the court consider the plan when reviewing the annual report.
   - Add language to Section 318 indicating that restoration of rights may be one of the goals for which planning should occur. In adding this language, the Reporter will look to the relevant New York statute.

2. Role of attorneys for respondents in an Article 3 or Article 4 initial hearing.
   There was extensive discussion of the role of a lawyer for a respondent.

One point of discussion was whether the Act should include provisions specifically addressing situations where the court has reason to suspect that the attorney claiming to be the attorney for the respondent is actually representing another person's interests. The advantages and disadvantages of such a provision were explored, including concerns that such provisions could have a chilling effect on the right to hire counsel. Discussion was also had as to the competing roles of the guardian ad litem and attorney for respondent, and the provision in Section 114 that these be separate people. Per this discussion, for the next revision the Reporter will:

- As part of the comments to Section 114, explain that Section 114 can be used to address concerns about tainted counsel.
- Change the words "the interest" in the second line of Section 114 to "an individual's interest."
- As part of the comments to Section 114, explain that an individual with an interest can be a respondent, but can also be someone else (e.g., a minor child, incarnated person, etc.).

Discussion was had about whether the attorney for a respondent should be required to meet with and/or interview the respondent prior to the hearing. Per this discussion, the Reporter will:

- Include in the comments information about how an attorney working with a respondent should act.

In addition, in response to other issues raised as part of the discussion of the role of attorneys, for the next revision the Reporter will:

- Add language requiring the lawyer to make reasonable efforts to ascertain the person's wishes. (Section 305, Section 406)
- Consider whether or not to define the term "guardian ad litem."
- Increase internal consistency in the Act by replacing the term "attorney" with the term "lawyer" so that only one of these terms is used.

3. <u>Potential right to counsel for protected persons seeking termination or modification, or removal of the appointee</u>.

The group was asked whether the rights related to attorney representation in an initial hearing should be extended to hearings addressing termination, modification, and/or removal. (Section 320, Section 433) Fiscal concerns were raised. Per the discussion, for the next revision the Reporter will:

- Draft language for the Committee's consideration that makes this extension.

4. <u>Potential right to counsel for minors</u>.

Discussion was had as to whether the alternatives regarding attorney representation in Section 305 should be added to Article 2 to give minors parallel rights in this regard. A number of situations were noted in which a proposed guardian might be problematic from the perspective of the minor. It was noted that parents might also have a significant interest in being represented by counsel. Per this discussion, for the next revision the Reporter will:

- Add the language from Alternative A in Section 305 to Section 205(c).
- Consider whether to make the language in Section 204(b) "unwilling or unable to exercise parental rights" more restrictive.

5. Protection for minors in general.

Discussion of the right to counsel for minors transitioned to a discussion of other rights of minors. For example, a discussion was had as to the value of involving minors in financial decision-making, and whether the provisions in Section 420 are sufficient to do this. Per that discussion, the Reporter will, at a minimum:

- Not continue the comment to Article 3 that would allow an Article 3 guardianship over a minor with a disability.

6. Confidentiality.

A discussion was had as to the extent of confidentiality in guardianship and conservatorship proceedings. There was a concern that electronic systems make it much easier for people to access records, increasing the concern about protecting sensitive information. There was also recognition of the value of transparency, including its value to advocates, press, and researchers when trying to improve systems. There was generally a sense of a need to balance these competing values. It was agreed for the next revision the Reporter will:

- Draft a provision on confidentiality for the Committee's consideration. In drafting this provision, the Reporter will consider, among other things: the challenges presented by electronic data systems; potential procedures for accessing files (including the potential to incorporate a modified FOIA approach); how a court might determine what is confidential (including whether a best interests analysis would be appropriate); the confidentiality not only of initial materials but of annual reports and plans; problems associated with unsealing information (including the risk of publicizing the vulnerability of an individual who is susceptible to future exploitation); and, who may request materials be kept confidential.
- Consider stating as part of this provision that anyone who is entitled to subsequent notice in Section 310(d) is entitled to access to records, including electronic records.
- Consider stating as part of this provision that the court is permitted to order disclosure to anyone.
- Invite suggestions—from this group and others who are interested—as to the content of the new confidentiality provision.

In addition, the Chair agreed to reach out to, and seek input from, the National Center for State Courts, the National Association for Court Management, and potentially other relevant organizations.

7. Terminology.

The group revisited the contentious issue of what to call the person for whom a guardian or conservator has been appointed. After significant discussion, a straw vote was taken and there was strong agreement that the next version should use the term "person subject to guardianship" and "person subject to conservatorship." Per this agreement, for the next revision the Reporter will:

- Replace the term "protected person" with "person subject to guardianship" and "person subject to conservatorship."

The group also discussed the term "protective order" as used in the Act. The Chair noted that one source of confusion is whether a conservatorship is a form of protective order or not. To increase clarity—and to make the new terminology more workable— the Reporter and Chair will:

- Work together to try to minimize the need to use the term "or other protective order".

A suggestion was made that the definition of decision-making support include assistance in communicating decisions, not merely making decisions. Per the discussion, for the next revision the Reporter will:

- Modify the definition of decision-making support to reflect this suggestion.

There was substantial discussion of the definitions of limited and full guardianship. There was discussion whether the terms should be used and, if so, whether they should be defined. There was discussion of the value of the judge having to specifically state each power removed, but also concern raised as to the additional bother, expense, and confusion when a needed power is not specified. Per the discussion, for the next version, the Reporter will:

- Add language stating that a full guardianship should only be granted if limited guardianship is not a viable alternative.
- Consider adding the language "expect as otherwise provided in the act" to the end of the definitions of limited and full guardianship.

In addition, based on the discussion, for the next revision the Reporter will:

- Add a definition of guardianship to Section 102. The Chair will provide the relevant Missouri statutory language for the Reporter's consideration.
- Consider defining "less restrictive means" in Section 102 based on the definition in Section 301(c), and/or include that definition in Article 2.

8. Decision-Making Standard for Guardians and Conservators.

There was discussion of the decision-making standards for guardians and conservators, and of the importance of making these standards clearer to both lay and professional guardians. Per the discussion, for the next revision the Reporter will:

- Revise Section 314 and Section 420, which govern the decision-making standard for guardians and conservators. The goal will to make duties clearer to both lay and professional guardians including to make it clear that a best interests approach should only be taken if a substituted judgment approach is not workable. To do so, the Reporter will consider relevant Illinois statutory language and language suggested by observer Linda Whitton.
- Consider eliminating the word "reasonable" from Section 414(a)(2) and finding an alternative way to address the problem of expressed preferences that are patently unreasonable.
- Consider adding language in the text of comments to make it clear that preferences can be expressed both through words and through actions.

9. Duties and responsibilities of guardians.

Per suggestions made, for the next revision the Reporter will:

- Add the following additional duties to the list of duties of a guardian: 1) the duty to identify and facilitate support; 2) the duty to investigate the person's values if unknown; and 3) the duty monitor the quality of services, including long-term care services.
- Separate Section 317 (a) into its own section.
- Revise the title of Section 317 to make it clear that the rights are not those of the guardian.

10. Visitation and right related to maintaining relationships.

There was discussion of new provisions related to visitation, and to maintaining and supporting relationships between the protected person and others. This included a discussion about whether the guardian should ever be allowed to restrict visitation, beyond time and place restrictions, without court approval. There was concern that such a broad ban on restrictions would be inconsistent with protecting a person's wishes to avoid visitation, as well as the ability of the guardian to restrict communication with problematic persons such as telemarketers, scam artists, or persons with a history of exploiting the person. Queries were made as to whether there should be language about how to determine what person's wishes are, and how the person can protect his or her rights to visitation. Per the discussion, for the next revision the Reporter will:

- Include, in Section 311, a provision that the notice include information about how the person can vindicate any of the rights (e.g., how to write a letter to the court).
- Revise Section 318 to require the guardian's plan indicate any plans to limit visitation/communication/interactions.
- Require the guardian's report to state if anyone is being denied visitation or having visitation restricted.
- Revise Section 317(e) to make it clear that the right includes the right to send, not just receive, communications and that it includes the right to engage in social media.
- Consider adding language to Section 317(e) or the comments stating that the person has a right to visit/interact/communicate.
- Add language to Section 316 regarding private communications.

11. Limitation on delegation by guardian.

There was a discussion of the conditions under which a guardian may delegate his or her powers. There was general agreement that the broad ability to delegate in the 1997 Act was not desirable. The group discussed whether delegation should ever be permitted. Per this discussion, for the next revision the Reporter will:

- Eliminate the guardian's ability to delegate in Article 3 in favor of creating a viable process for an "interim" person to step in.
- Take a parallel approach to delegation in Article 2. (Section 209(b))

12. Notification of rights.

There was discussion of the importance of notification of rights, and how to make that notification meaningful and understandable to the person. It was agreed that there should

be a standardized notice of rights that is in plain language, and which (to the extent feasible) is presented in a way that the person can understand. Per the discussion, for the next revision the Reporter will:

- Include a provision stating that the person must be notified of how to vindicate his or her rights. (Section 311, Section 412)
- Consider adding additional provisions by looking to the Texas Bill of Rights, as well as key language from other states (including Florida, California, and Michigan).
- Draft a sample notice.
- Make it the duty of the court to provide the notice to the person, the guardian, and other key people.
- Draft a prefatory note that emphasizes ideas related to rights, supported decision-making, and maximizing self-determination even after appointment.

13. Language.

There was general agreement that it is critical that the person be able to understand and participate in proceedings. It was recognized that language barriers can be a significant impediment to this, but that it is not possible to guarantee language accessibility for all due to the large number of languages spoken in the country as well as regional differences even among those who speak the same language. Richard Cassidy informed the group that the ULC Wage Garnishment project was translating a key notice into plain language in multiple languages at considerable cost, and that a parallel endeavor might be possible for a standardized notice under the revised Act. Per the discussion of language accessibility, for the next revision the Reporter will:

- Require the petition for a guardianship or a conservatorship to state the non-English language related needs of respondent or any interested party.
- Require plain language in Section 303 and Section 403, and the new notice provisions.
- Require court to make all reasonable efforts to provide translation, especially as to the notice of hearing governed by Section 303 and Section 403.
- Look to other acts that may have addressed parallel concerns, including the National Probate Court Standards and Washington DC's language access act.
- Consider adding language to Section 303 and Section 403 that the person be notified of languages spoken in the court and that the person may bring a translator.

14. Limitations on guardians and conservators opposing restoration of rights.

There was a lengthy discussion of the proposed new provisions in Section 320 and Section 433 limiting the ability of a guardian or conservator to oppose termination of a guardianship or conservatorship were added for the Committee's consideration. There was significant discussion and disagreement both about whether such provisions should be included in the Act and, if so, the extent to which and the conditions under which such opposition should be prohibited. Concerns included that the provision would limit the ability of the guardian to provide valuable information to the court, and not require the guardian to assist with restoration when it would otherwise be consistent with the fiduciary duty to assist with restoration. It was noted that the key issue here is one of conflict of interest, and trying to address the fact that the guardian has a conflict of interest when opposing termination. It was discussed whether this provision is needed to

protect against the conflict of interest, or whether court's general ability to deny fees is sufficient. For the next revision, the Reporter and the Chair will take all of the comments and suggests into consideration and make a recommendation to the Committee on how best to proceed in light of the competing views and underlying considerations.

15. Removal.

There was significant support for separating provisions governing removal of a guardian from those governing termination or modification of a guardianship. The Reporter queried what should be different if the two were separated. Suggestions made included a lower standard for removal of a professional guardian than for removal of a family guardian. The Chair pointed out the standard for removing a corporate trustee is lower in the Uniform Trust Code (UTC). Per the discussion, for the next revision the Reporter will:

- Separate into different sections provisions governing removal of a guardian and those governing termination or modification of a guardianship
- Look to outside resources for reference in drafting the removal provisions, including the UTC's provisions governing professional fiduciaries accused of misconduct.

16. Procedural Rights.

Participants were invited to makes suggestions about procedural rights. Per these suggestions, for the next revision the Reporter will:

- Add a bracketed provision to Section 107 that gives the respondent a right to a jury trial (perhaps consistent with provisions in the Uniform Probate Code).
- Consider stating that the court is to abide by the state's rules of civil procedure and the state's rules of evidence. (Section 107, Section 309, Section 408)

17. Restoration of rights more broadly.

Discussion was had about whether or not it would be advisable to require that, at a particular point in time, there be a more extensive, automatic reconsideration of whether a guardianship or conservatorship should continue. There was some support for this, but concern that doing this would be a major impediment to enactment. Per the discussion, for the next revision the Reporter will:

- Review Connecticut's statutory approach to this issue.
- Consider revising Section 319(d)(2) to include such a provision (perhaps in brackets).

18. Restrictions on certain moves.

There was lengthy discussion of whether there should be restrictions on the guardian moving the person to certain forms of housing. A number of concerns were raised about the new provisions creating restrictions on moves. Concerns included that there are significant costs associated with having to go to court in order to move an individual to a nursing home or other restrictive or secure facility; that the term "absent exigent circumstances" is unclear; that courts can be slow and it can be hard to get court attention especially given a trend toward reductions in clerks; and that the term "restrictive" is not defined and there may be confusion about what settings are restrictive.

There appeared to be general agreement that it is desirable to add provisions protecting individuals with intellectual and development disabilities from being inappropriately housed, but the concern about inappropriate housing was not limited to that population. A query was raised about whether there is a way to draft language that would limit placement of persons with intellectual and development disabilities in restrictive settings, but not placements of people with progressive cognitive decline (e.g., dementia). One suggestion was that the order state whether such moves are permissible. Another suggestion was that the current provision be maintained in large part, but that the court be permitted to waive this requirement in the initial court order. Another was to give the person and concerned parties notice of the change prior to a move. Another was to add carve-outs where, for example, there is third-party approval. On the other hand, there was concern about facilities not accepting people in needs of facility-level care if facilities are worried that the guardian lacks authority to admit and of the person losing out on a desirable facility. Implications for Medicaid eligibility were also raised. In addition, concern was raised about guardians surrendering community homes to which an individual might return. Per the discussion, for the next revision the Reporter will:

- Require court approval with notice to family with sale of home or surrender of a lease. The Reporter will look to Connecticut's law in crafting this. The Reporter will also revise Article 4 to address the conservator doing this.
- Draft provisions for the Committee's consideration that would allow the court to waive the requirement of court approval for a move that would otherwise require court approval so long as the person and interested parties are given notice of move and how to object. (Section 315)
- Draft a provisions stating that no court is approval is required if the proposed move is in the guardian's plan. (Section 315)
- Add the right to contest a move to the notice of rights (Section 311), and specify a procedure for objecting to a move. In drafting these provisions, the Reporter will look to the Notice of Proposed Action approach taken under the Uniform Probate Code.
- Revisit the language in Section 315(2)(D) to try to make it clear that this is about a change in permanent dwelling, not short-term treatment.
- Revisit the language in Section 315(2)(D) to try to replace or supplement the "exigent circumstances" language with something less ambiguous.

In addition, when drafting the comments, the Reporter will reference the Supreme Court's *Olmstead* decision.

19. Voting rights.

There was lengthy discussion about voting rights of persons subject to guardianship and conservatorship. There was general agreement that a guardianship or conservatorship should not automatically strip a person of the right to vote. Per this discussion, for the next revision the Reporter will:

- Retain the approach in the current revised draft Act that the right to vote is not stripped absent an explicit statement.

- Add a bracketed provision stating a standard for denying the person the right to vote, using roughly the standard from the 2007 conference at McGeorge Pacific School of Law (substituting the word "support" for the word "accommodation").
- Add a legislative note that the above noted bracketed language might be inconsistent with other state law and state constitutional provisions.
- Consider substituting the words "findings that support" for "reasons" to make it clear that this an inquiry about the person, and that merely referencing state law is insufficient.

20. Guardian's power with regard to marriage or divorce.

There was discussion about the bracketed provisions about marriage and divorce. (Section 315) It was noted that there is a divide among the states as to this matter. It was also noted that divorce may be sought by a guardian who dislikes the spouse of the protected person or to obtain access to assets. It was suggested that the guardian's powers be expanded to include the power to seek a declaration of invalidity of marriage or an annulment. A concern was raised about the conservator or guardian marrying the person. It was also suggested that notice to the person be required. In addition, it was suggested that comments discuss motives and bias against marriage. Finally, it was also queried whether there needs to be a specific determination that the right to marry is taken away. Per the discussion, for the next revision the Reporter will:

- Add removal of the right to marry to the list in Section 310 of rights that can only be stripped with an explicit finding. This would create a Section 310(a)(4).
- Consider removing marriage from Section 315.
- Maintain the approach to divorce in Section 315.
- Add annulment/invalidity determinations to the bracketed language in Section 315.
- Consider adding a provision that requires the court appoint an attorney for the person prior to the person's marriage or to appoint a visitor.
- Consider whether the current provisions provide for adequate notice to the person.
- Revisit the decision-making standard in Section 315(b) to bring it in line with the general decision-making standard.

21. Kickbacks and conflicts of interest.

There was discussion of the new language designed to address kickbacks and financial conflicts of interest. Special attention was paid to whether the proposed language was sufficient. Per this discussion, in the next revision, the Reporter will:

- Add to Section 320 and Section 425 the phrase "anything of value".
- Add to Section 320 and Section 425 the phrase "or immediate family member."
- Consider requiring disclosures of business relationships.
- Eliminate the "as a result of" language in Section 319 and Section 425 and replace it with something along the lines of "individuals providing goods or services to the person subject to guardianship,"
- Look to Section 802 of the Uniform Trust Code and to National Guardianship Association's Standard 16 for insight and potential language.

- Consider adding a de minimis exception. In doing so, the Reporter will look to the treatment of incidental benefits in Section 114(d) of the Uniform Power of Attorney Act.
- Consider whether there are other places in the Act where a related prohibition might be added, especially for professional guardians/conservators.

In addition, when drafting the comments, the Reporter will explain that receiving kick-backs is inconsistent with duty of loyalty.

22. Successor guardians.
In the interest of time and deliberation, rather than discussing the provisions related to successor guardians and failures to accept appointments, participants were invited to share thoughts about the new provisions related to successor guardians and failures to accept appointment with the Reporter and the Chair at their convenience. (Section 110, Section 202, Section 204)

23. Provisions related to the effect of previously appointed surrogates.
For the next revision the Reporter will:
- Clarify that this is an agent appointed prior to the guardianship/conservatorship.
- Indicate that an attorney-in-fact under a durable power of attorney for finances counts as a previously appointed surrogate.
- Consider adding language to add a duty to cooperate and will look to the Uniform Power of Attorney Act for language about cooperation.
- Consider adding to the prefatory note encouraging courts to revisit orders entered prior to the adoption.
- Clarify these provisions pertain to surrogates appointed by the person.

24. Effect of revisions on pre-existing guardianships and conservatorships.
It was noted that there may be some issues when states transition from their existing law to the revised Act. To address such issues, per the discussion, for the next revision the Reporter will:
- Add a transition provision.
- Revisit the draft revised Act's effective date provisions to make it clear that the Act's provisions will apply to existing guardianships and conservatorships.
- Clarify that the procedural rights afforded in the Act apply to guardianships and conservatorships that were imposed prior to the Act's adoption.

25. Fees provisions.
A discussion was the factors that should be relevant to the amount of fees charged by a guardian or conservator. A query was made as to whether the size of the estate is relevant. A suggestion was made that the Committee look to the Arizona fee guidelines for insight. Per this discussion, the Reporter will:
- Consider modifying the term "like services" to avoid having it read as a "conservator's services" or a "guardian's services." (Section 210, Section 317, Section 419)
- Look to the Arizona fee guidelines for insight.

- Consider requiring guardians and conservators to provide particularized bills (e.g., to provide detailed accountings listing each task and the amount of time it took), while remaining cognizant of concerns that requirements not be so demanding that billing takes too much time or itself becomes a significant expense.
- Consider adding comments for the next draft on the issue of fees.

26. Petition requirements and draft model petition.

The Committee reviewed the draft model petition. In doing so, a number of concerns were raised. These included whether the petition would be sufficiently easy for a pro se applicant, whether there should be a list of powers or suggested powers, whether listing powers would cause petitioners to ask for broader powers than necessary, the impact on privacy of extensive requirements in the petition, whether abilities should be listed (although there was concern was that this would change the default assumption that the person can do anything not listed). There was also a discussion of whether the petitioner should nominate a visitor. Per this discussion, for the next revision the Reporter will:

- Add a line for the petitioner to state whether there is a durable power of attorney for finances or heath care in place and to name the person who is serving as the agent pursuant to it.
- Add language stating the basis for appointing a guardian or conservator (ie., the threshold definition from Section 301 and Section 401).
- Consider adding instructions to provide more guidance to pro se (or simply less knowledgeable) petitioners.
- Bracket the language "health care power of attorney" to reflect state differences.
- Add the language of Section 301(c) to the petition to indicate what less restrictive means are. (It was noted that this will have the effect of highlighting decision-making support as an alternative.)
- Delete the word "brief" in line 5.
- Consider adding a provision in the draft revised Act, and parallel language in the petition, that the petitioner should state if the petitioner anticipates that the guardian or conservator will hire counsel and the fees expected.
- Consider other changes that will make the petition requirements more user-friendly.
- Switch items 9 and 10 (guardianship and conservatorship).
- Separate the second clause of the second sentence in item 5 from the rest of item 5.
- Eliminate the check boxes from line 4 and instead ask the petitioner to state the powers they seek to have a guardian or conservator granted by the court.
- Replace the word "impairment" with "limitation" in 10(e) of the draft petition, and make the parallel change in the draft revised Act.
- Consider creating a model petition for a temporary guardianship and for the authorization of a single transaction.

27. Conservator's duties.

The Chair asked for a special sub-committee to discuss conservators' money management duties. Charles Golbert, David English, Nina Kohn, Gregory MacKenzie, Catherine Seal, and Deborah Tedford volunteered to work on these issues. Issues for consideration by the subcommittee will include:

- Whether a single transaction provision should be added to Article 3, potentially a bracketed section on single health care decisions.
- Whether there are additional revisions should be made to encourage single transaction orders.
- Whether Section 422 is sufficiently up-to-date,
- Whether there is enough detail in Article 4 to govern Medicaid decision-making.
- Whether the conservator should be empowered to loan money to the person subject to conservatorship. (Section 420(b)(19))
- Whether a provision is needed to allow a conservator not to pay certain debts in order to pay other debts (e.g., to pay the nursing home bill before the credit card debt).
- Whether the conservator needs the ability to execute a will for the person/
- Whether a conservator may defend him or herself against allegations of breach of duty, and pay defense costs from the estate. (Section 420(b)(24))

28. Jurisdiction over guardianship of minors.

The Chair introduced the issue of jurisdiction over minors. The Chair noted that the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) covers adults but that the provisions in the draft revised Act governing jurisdiction over minors' guardianships (specifically, Section 105) provide much less detail. Per the discussion, for the next revision the Reporter will:

- Add a provision that transfer of guardianship of minors is governed by Child Custody Jurisdiction and Enforcement Act.
- Add a provision that parallels the UAGPPJA transfer provisions to Article 4 to specifically deal with minors subject to conservatorship.

29. Custodians.

The Chair discussed concerns that the current draft might not include adequate safeguards relating to how a custodian to whom funds for minors are transferred is selected and monitored. (Section 120) The Chair explained that, in the current draft, the only safeguard is that the custodian is a fiduciary. It was discussed that concerns about inadequate safeguards must be balanced against a recognition that ensuring good management can come at significant cost, especially when there is a relatively small amount of money involved. For the next revision, the Reporter will:

- Remove the reference to the Uniform Custodial Trust Act.
- Increase the bracketed dollar amount in Section 120 to bring it in line with the annual exclusion amount.

30. Undue Influence and Fraud.

Observer Erica Wood shared California's provision making inability to resist undue influence or fraud as grounds for appointing a conservator. A discussion was had whether the current provisions in Section 401(a)(2)(A) are adequate in light of concerns about financial exploitation. Per this discussion, in the next version, the Reporter will:

- Change the words "will be wasted" in Section 401(a)(2)(B) to "likely be wasted."
- Consider whether there is additional language needed to address undue influence. Per a recommendation made, the Reporter will contact Lori Stiegel of the ABA Commission on Law and Aging for input.

31. Other Planned Revisions.

In addition to the above-mentioned revisions, as a result of the discussions, the Reporter will:

- Add provisions for guardians and conservators to defer to an agent acting pursuant to a valid durable power of attorney for finances.
- Add a provision to allow a conservator to engage in Medicaid planning.
- Consider adding provisions to require a guardian's plan and a conservator's plan be updated in a regular timeframe.
- Consider how to better align the requirements of the guardian's plan with the requirements of the annual report so that the annual report can be a planning opportunity.
- Cross-reference, in the draft revised Act or comments, the duty to involve the person in the provisions governing guardian's plans.
- Consider how best to clarify that the guardian ad litem should be independent.
- In Section 304(d)(2), eliminate the word "daily" and revisit the provision to make sure it adequately captures needs related to instrumental activities of daily living (IADLs).
- In Section 306 on professional evaluation, consider whether the court needs power to access a previous evaluation.