

PRELIMINARY REPORT*

FOR DISCUSSION ONLY

GUARDIANSHIP INTERSTATE JURISDICTION AND ENFORCEMENT ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR
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** The Drafting Committee is presenting this report in order to advise the Conference of its progress to date and to obtain comments regarding certain issues that it is considering. This report has not been reviewed by the Committee on Style and will not be read line by line.*

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GUARDIANSHIP INTERSTATE JURISDICTION AND ENFORCEMENT ACT

This drafting committee was appointed in early 2005 and will have its first drafting committee meeting in October 2005. David Nixon of Arkansas is Chair. David English of Missouri is the National Conference Reporter.

The goal of the committee is to prepare a uniform law that would specify which court has jurisdiction to appoint a guardian (personal matters) or conservator (property matters). Provisions relevant to the subject are currently contained in UPC Article V and in the free-standing Uniform Guardianship and Protective Proceedings Act, but a Study Committee chaired by Lyle Hilyard of Utah concluded that these provisions, last amended in 1997, were in need of revision due to a number of more recent developments. The primary focus of the project is on guardianship/conservatorship for incapacitated adults, not minors.

Commissioners Nixon and English held a pre-drafting meeting with key advisors and observers on June 17. At that meeting, the consensus was that the act should be prepared in a way that it can be enacted both by states that have enacted the broader UPC/UGPPA as well as by states that have differing guardianship laws. Among the issues discussed at that meeting and which the Act could address:

1. Which courts should have primary jurisdiction to appoint a guardian/conservator for individuals with contacts in more than one state;
2. What simplified procedure might be developed to transfer a guardianship/conservatorship case to a different jurisdiction;
3. To what extent guardianship/conservatorship orders should be given extraterritorial effect.

Much of the early work of the committee has been devoted to assembling a diverse group of expert advisors. Among the groups represented at the June 17 meeting were AARP, the National Academy of Elder Law Attorneys, the National College of Probate Judges, the National Guardianship Association, the Council of State Governments, the National Center for State Courts, JEB Family Law, and the ABA (Commission on Law and Aging, Commission on Mental and Physical Disability Law, Real Property Probate & Trust Law Section).

Effective resolution of jurisdictional disputes often require effective communication between judges in different states. One way such communication can be regulated is through an interstate compact. The most promising development at the June 17 meeting was the high interest in the project from the Council of State Governments, the group that drafts interstate compacts. One possible outcome is that the uniform act could focus on core jurisdictional issues with much of the procedural detail covered by interstate compact.