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

**THOMPSON HOTEL**
**CHICAGO, IL**
**APRIL 17-18, 2015**

**IN ATTENDANCE**
**(for all or part of the meeting)**

David English (Chair)
Nina Kohn (Reporter)
Mary ("Molly") Ackerly
William ("Bill") Barrett
Wendy Cappelletto
Ginny Casszza
Richard Cassidy
Cheryl Cesario
William Scott ("Scott") Donaldson
S. Kay Farley
Marc Feinstein
Marty Ford
Josephine Gittler
Kristin ("Kris") Glen
Charles Goldbert
Terry Hammond
Lyle Hillyard
Sally Hurme
David Hutt
Liza Karsai
Stanley Kent
Harriett Lansing
Diana Noel
Ben Orzeske
William ("Bill") Quinlin
Catherine Anne Seal
Lowry Snow
Michael Sconyers
Deborah ("Debbie") Tedford
Brenda Uekert
Karen Washington
Linda Whitton
Nora Winkelman
Erica Wood

## SUMMARY OF MEETING

1. Introduced the revision project. The Chair, David English, introduced the history of the Act, the charge to the Committee, and the process for the Committee as it moves forward. It is anticipated that the first reading will be in Vermont in summer 2016 and that, if all goes as hoped, the revised Act will be approved in San Diego in summer 2017. The Chair also discussed the roles of the various participants in the process, emphasizing that all participants will be treated as equal in this process (be they commissioners, observers, or advisers) with the exception that only commissioners can engage in formal votes. All present then introduced themselves.

2. Provided background on the Third National Guardianship Summit (NGS). Erica Wood and Sally Hurme provided background on the Third National Guardianship Summit. They explained that, whereas earlier conferences had focused on the process leading to the appointment of a guardian or conservator, the NGS was focused on practices following appointment of a guardian or conservator. It was noted that a key product of the NGS was a series of standards as to how guardians and conservators should make decisions on behalf of a person subject to guardianship or conservatorship.

3. Discussed person-first language. Participants engaged in a lively discussion of the desirability of person-first language, and possible person-first terminology. There was general agreement that the revision should attempt to incorporate person-first language. For the next meeting, the Reporter will attempt a draft that uses language other than "ward" or "incapacitated" to the extent possible and utilizes person-first language instead (precise wording still to be determined). The Reporter will also attempt to use a single term that can describe both persons subject to guardianship and those subject to conservatorship.

4. Discussed person-centered decision-making. A number of participants provided background on what person centered planning means, and participants discussed ways it could be incorporated into the Act. In addition to the possibilities in the Reporter's Issue List distributed prior to the meeting, a number of suggestions were made including that visitation should be required, guardians and conservators might be required to say how they will involve the person as part of their decision-making plan, the Act might recognize that the fiduciary role requires person-centered administration, and that the fiduciary's reports might be required to be shared with other family members to increase the likelihood that there is oversight.

5. Discussed how to promote limited guardianship. As part of the discussion of person-centered planning, participants discussed how to encourage limited guardianship, recognizing that limited guardianship remains a rarity despite significant law reform efforts. Ideas included creating a mechanism for the guardian's powers to be expanded (or constricted) without a new court order when certain triggering events occur, creating a model petition for a limited guardianship, and creating a model template for judges to use in drafting guardianship orders.

6. Discussed professional evaluation. Participants discussed whether professional evaluation should be required under all or some circumstances. Most of the comments by participants suggested that across-the-board, mandatory professional evaluation would be problematic

because of lack of resources. There were also concerns about mandating professional evaluation given that there is not a widespread understanding of what "good assessment" requires. Participants also noted that doctors may not necessarily be the best or most cost-effective assessors. As part of this discussion, there was also discussion about the privacy implications of evaluations being part of the public record.

7. Discussed mandatory representation. There was significant disagreement as to whether all respondents should be represented by counsel. The Chair therefore proposed that, for the next draft, the Reporter would keep the alternative approaches to this issue currently in the Act, but add some clarity as to the role of attorney. A suggestion was made that the Act might add clarity by specifying that an attorney is to act according with his or her state's ethical code for attorneys. However, concerns were raised that it would not be proper for legislatures to tell attorneys how to represent their clients and thus this might be possible only as a court order.

8. Discussed bond requirements for conservators. There was broad support among participants for making bonds a default for conservators. Indiana's legal scheme and the National Probate Court Standards were offered as examples for what this default might look like. A suggestion was also made that bonds should not be waived simply because the appointee looks trustworthy; proper reasons for waiver might, by contrast, include the small nature of the estate. It was also suggested that restricted accounts can be a viable alternative to bonding in some situations.

9. Discussed guardianship fees. Catherine Seal provided an introduction to the Summit's recommendations on this issue. Participants discussed the possibility of adding a list of factors related to reasonableness either in the Act or in the comments. Participants also discussed including a requirement of advance disclosure of fees to the person or the person's family. A suggestion was further made to incorporate language from the NGS recommendations about documentation to support fees into the Act. Another suggestion was to require court approval of fees, perhaps limited to fee amounts above the financial plan. Another suggestion was that conservators be required to provide detailed advanced plans of their proposed actions so that conservators' own plans could be used as a guide for determining whether their later-billed fees were reasonable.

10. Discussed guardianship monitoring. Sally Hurme and Brenda Uekert provided an overview of the status of guardianship monitoring. It was suggested that the Act look to the NGS recommendations and, in particular, to Standard 2.3. Other suggestions—that overlapped to a degree—were to require tickler systems, permit volunteer monitoring programs, require supporting documentation from conservators (e.g., bank statements), require courts to review annual reports and call in guardians and conservators whose reports raise issues, require petitioners to identify any representative payees already in place, tie reporting requirements to the guardian's fees, and to look to the Uniform Durable Power of Attorney Act's accounting mechanism for guidance. Another suggestion was to, at some point in the priority list for selection, to give preference to a certified guardian. Overall, there seemed to be broad support for, at a minimum, the Act requiring that the courts require, review, and approve an annual report.

11. Discussed health care decisions. The Chair provided background on the NGS's recommendations as to health care decisions. A discussion was had as to whether to create a new section of the Act pertaining to health care decisions and as to the potential content of such a section. A suggestion was made to look to the Uniform Health Care Decisions Act and attempt to harmonize the two acts. Issues raised included how to address nutrition/hydration, whether to allow a guardian to act in situations where a health care agent would lack authority, and the potential problems for persons with disabilities of using the term "end-of-life". There was debate over whether to include a health care section, in large part because of the problems it would create for enactment. For the next stage, the Reporter will attempt to translate the NGS standards relating to health care decisions into statutory language, but will ~~to~~ include this as an optional section (ie., a bracketed section) recognizing that many states already have law on this issue and that it is a politically charged topic. Consistent with a suggestion to do so, the Reporter will also add language indicating that a guardian is authorized to receive personally identifiable health information.

12. Discussed residential decisions. The Chair provided background on the NGS's recommendations regarding residential placement decisions. There was significant discussion of the NGS recommendation that a court order be obtained for a move to a more restrictive setting. Concerns were raised about the administrability of such a requirement (e.g., the lack of clarity as to what is a more restrictive settings, and the problems for moves within multi-level facilities). Alternative approaches suggested were advising the court and the person of the move (as opposed to requiring approval), requiring approval only for moves to restricted (e.g., locked) units, providing special protection where a move would prevent a return home (e.g., because of the loss of a rent controlled unit), and including instructions about when moves require court approval into initial orders so that orders are tailored to the individual.

Moving forward, the Reporter will draft a version for the Committee's consideration that requires notice to the court, the person, and interested parties if there is (1) a change in residential placement, (2) a sale of the person's residence, or (3) the relinquishment of a rental unit in which the individual dwells. The court would be required as part of the initial order to determine who are the interested parties who would be entitled to such notice.

As part of the discussion, a suggestion was made for a bill of rights for persons subject to guardianship. The Chair recommended that this issue be raised at a subsequent meeting.

13. Discussed mandating presence of allegedly incapacitated person at the initial hearing. There was a debate as to whether a guardian/conservator should ever be appointed if the allegedly incapacitated person is not present at the hearing. A suggestion was made that, regardless of whether the person's presence is required, the Act should include language about providing support (e.g., a translator, someone who can interpret a respondent's non-verbal communications, assisted hearing devices, etc.) to the person so that they can in fact participate if present. It was also suggested that the guardian ad litem might be given the duty of determining how the person can best participate in the hearing.

For the next meeting, the Reporter will draft language that requires the allegedly incapacitated person to be present (in person or by distance meeting technology) with only very limited

exceptions. Consistent with the concerns raised, this limited exception might be related to the presence/role of counsel, and/or that of the guardian ad litem or visitor. The Reporter will also draft language about assistance.

14. Discussed attorney representation to seek termination or modification. Participants discussed the importance of attorney representation. The general sentiment appeared to be that court approval should not be required for an attorney to represent a person subject to guardianship for the purpose of seeking termination/modification of the court order, but that court approval was appropriate for approval of fees to counsel who engage in such representation.

As part of the discussion of attorney representation, discussion was had as to adding mechanisms to trigger reexamination of the guardianship. A suggestion was made that an informal communication from the person, and potentially interested parties as identified in the order, could also trigger an inquiry by the court into the appropriateness of the continuation of the guardianship or conservatorship. Another suggestion was that, to make such communications possible, annual notice of the right to challenge should be provided to the person. There was also discussion as to whether the guardian or conservator should have a duty to report certain changes in the person's status and whether these should trigger court reexamination. In addition, it was suggested that the Act should—much like Colorado's law—restrict the ability of guardians and conservators to oppose modification/termination while acting in their fiduciary capacities (ie., with their power and fiduciary funds).

For the next meeting, the Reporter will incorporate language both about the right to representation to seek modification/termination and about mechanisms for triggering reexamination of an appointment. The Chair suggested that in a subsequent meeting the group consider the grounds for removing a guardian or conservator.

15. Discussed extent of minor's involvement and other minor's issues. There was a general discussion of whether the Committee should look into minors' issues as a part of the revision process, and of some potentially key concerns related to minors. There was general sentiment that although minors' issues were not a focus on the NGS, the Committee should consider minors issues as part of its revision process. Other points of general agreement were that orders for minors should not continue into adulthood and that pushing young adults with intellectual or developmental disabilities into adult guardianship as a transition plan is inappropriate. With this in mind, the Report will add language to the incapacity definition in the Act to clarify that appointment of a guardian or conservator is not appropriate where the person is able to effectively make decisions with support.

As part of the discussion of minors, there was a discussion of chronological age cut-offs. There appeared to be general agreement that the age for notice could be pushed downward, perhaps to 12 consistent with the Uniform Adoption Act. It was also suggested that the age for termination might be pushed upward from 18 (perhaps to 21), perhaps thereby discouraging the use of adult guardianship for transition planning.

A suggestion was also made that perhaps the Act should not include minors at all or, if it continued to do so, it should only include minors subject to conservatorship and not those subject to guardianship. As a general matter, there seemed to be more interest in not having the Act consider the guardianship issue than the Act not considering the conservatorship issue. It was suggested that, to inform the Committee's approach on this issue, it would be helpful to know to what extent the states have created separate statutory schemes for adult and minor guardianship. Erica Wood and Sally Hurme generously agreed to create a chart on this issue.

Moving forward, the Chair will send a note to the Executive Committee and contact the head of the JEB Family Law. The goal of these communications will be to expand the Committee's charge to include consideration of minors' issues and to expand the group's expertise on these matters by bringing in experts in children's rights and family law.

16. Discussed appointment of a guardian by will or other writing. The Chair introduced concerns about Sections 302 and 303 of the Act. The general sentiment was that these Sections should be removed from the next version of the Act, but that persons who would be nominees under Sections 302 and 303 might be given priority for selection as guardians and conservators.

17. Discussed notice requirements. It was suggested the revised Act might expand the list of persons entitled to notice of a petition for guardianship or conservatorship to include such persons as Veterans Administration fiduciaries, persons serving/named as supporters in supported decision-making arrangements/agreements, domestic partners, and perhaps stepchildren under some limited circumstances (perhaps related to ongoing relationship and parenting during minor years). There was some debate over whether to maintain the term "residing with for six months." There seemed to be support for providing notice to people sharing household tasks but perhaps not those who relationship is purely economic. It was also suggested that the list of persons to whom notice of actions subsequent to appointment must be given (according to a court order), might well be different and more restrictive. For the next stage, the Reporter will therefore draft somewhat expanded notice requirement, with the stepchildren portion restrictively defined and bracketed.

An issue was also raised by who should serve the notice, and a suggestion that this is best done by a guardian ad litem or visitor. A suggestion was also raised that the Act include a requirement of type size.

18. Discussed duties and powers of conservators, including the power to delegate. The Chair explained that since the Act was last revised, a number of other fiduciary statutes have been adopted or revised, including the Uniform Prudent Investor Act, Uniform Trust Code, Uniform Power of Attorney Act, and the Uniform Fiduciary Access to Digital Assets Act. The Chair suggested that there may be an opportunity to harmonize the Act with the fiduciary duties and powers of fiduciaries in related Acts. Participants were encouraged to think about how this might be done. The Chair stated that, for the next meeting, an issues list as to Article 4 will be prepared.

19. Discussed NGS standards on financial decision-making. The Chair discussed the NGS standards related to financial decision-making. The Chair proposed that further discussion of these standards be had a future meeting.