



Staff Memorandum

EXECUTIVE COMMITTEE Agenda Item # 20

REQUESTED ACTION: Approval of an affirmative legislative proposal from the Elder Law Section to incorporate the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA") into New York State law.

Attached are supporting memoranda and proposed legislative language from the Elder Law Section relating to UAGPPJA. The key concept of the UAGPPJA is that the "home state" of a person should have jurisdiction over that person for guardianship purposes, regardless of where that person is physically located. The UAGPPJA (or some modified version of it) has been adopted by 29 states and the District of Columbia.

The Elder Law Section has proposed legislation to do the following: (1) create a new Article 82 of the New York Mental Hygiene Law; (2) amend Section 1758 of the New York Surrogate's Court Procedure Act; (3) amend Section 81.18 of the New York Mental Hygiene Law; and (4) amend Section 81.04 of the New York Mental Hygiene Law.

The new Article 82 of the New York Mental Hygiene Law would incorporate a modified version of the UAGPPJA into New York law.

The amendment to Section 1758 of the New York Surrogate's Court Procedure Act would state that the jurisdiction of the New York Surrogate's Court is subject to Article 82 of the New York Mental Hygiene Law.

The amendment to Section 81.18 of the New York Mental Hygiene Law would state that a court may utilize Article 82 of the New York Mental Hygiene Law with respect to appointing a foreign guardian for a person not present in the state.

The amendment to Section 81.04 of the New York Mental Hygiene Law would expand the power of the New York Supreme Court and county courts outside the City of New York to provide relief.

Also included in your materials are an article by Ronald Fatoullah and Yan Lian Kuang-Maoga providing an overview of the UAGPPJA and a chart of reported cases on multi-state guardianship jurisdiction issues.

This report was circulated for comment on February 13, 2012 and posted on the Reports Group web page. No comments have been received.

Ronald A. Fatoullah and Ira Salzman, members of the Elder Law Section's Executive Committee, will present the proposal.

UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS

JURISDICTION ACT

MENTAL HYGIENE LAW ARTICLE 82

GENERAL PROVISIONS

SECTION 82.101. SHORT TITLE. This [act] article may be cited as the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

SECTION 82.102. DEFINITIONS. In this [act] article:

(1) "Adult" means an individual who has attained [18] eighteen years of age.

(2) "Conservator" "Guardian of the property" means a person appointed by the court to administer the property of an adult, including a person appointed under [insert reference to enacting state's conservatorship or protective proceedings statute]. article 81 of the mental hygiene law and article 17-A of the surrogate's court procedure act and including a conservator appointed by a court in another state.

(3) "Guardian of the person" means a person appointed by the court to make decisions regarding the person of an adult, including a person appointed under [insert reference to enacting state's guardianship statute]. article 81 of the mental hygiene law and article 17-A of the surrogate's court procedure act.

(4) "Guardianship order" means an order appointing a guardian.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian has been appointed.

(74) "Party" means the respondent, petitioner, guardian of the person,

conservatorguardian of the property, or any other person allowed by the court to participate in a guardianship proceeding for the appointment of a guardian of the person or a protective proceeding.

(85) "Person," except in the term incapacitated personperson for who a guardian of the person has been appointed or protected 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.

(96) "Protected person" means an adult for whom a protective order has been issued.

(107) "Protective order" means an order appointing a conservatorguardian of the property or other order related to management of an adult's property.

(118) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(129) "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.

(1310) "Respondent" means an adult for whom a protective order or the appointment of a guardian of the person is sought.

(1411) "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.

New York Commentary

The definitions have been modified to make the terminology and the statute consistent with Article 81 of the mental hygiene law and Article 17A of the surrogate's court procedure act.
The definition of guardian of the property in section 82.02 (2) refers to the term "conservator"
because that is the term that is commonly used in other states for what in New York is called a

"guardian of the property." This change is similar to section 11.90.020 of the laws of the State of Washington.

SECTION 82.103. INTERNATIONAL APPLICATION OF THIS ARTICLE

[ACT]ACT. A court of this state may treat a foreign country as if it were a state for the purpose of applying sections 82.101 through 82.106, 82.201 through 82.209, 82.301 through 82.302 and 82.501 through 82.502.

New York Commentary

No substantive changes are proposed to this section. It gives broad discretion to the court to determine whether, and to what extent, to honor the guardianship orders of other countries. Under current New York law, the order of a foreign country that appoints a guardian is prima facie evidence of incapacity. Matter of Sulzberger, 159 Misc.2d 236 (S.Ct. New York 1993), Application of Witten, 78 Misc.2d 162 (S.Ct. New York, 1974), see, Matter of Ginsberg v. Larrlade, 59 A.D.3d 249 (1st Dept. 2009). By making section 82.202 ante subject to current Mental Hygiene Law § 81.18 it is the intention that current law with regard to foreign countries would continue to apply.

At least two states have chosen to modify this section of the Act. Section 26-213-103 of the laws of Alabama adds the following language to its version of this statute:

"A court of this state need not apply this chapter if the guardianship or conservatorship law of a foreign country violates fundamental principles of human rights."

Section 13.5-102 of the laws of Maryland limits the applicability of its version of this statute so that it does not apply:

"Unless a court of this state finds by a preponderance of the evidence that a foreign country applies and follows substantive and procedural due process consistent with the practices and policies of the State of Maryland."

SECTION 82.104. COMMUNICATION BETWEEN COURTS.

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

(b) If the parties are not allowed to participate in the communication, the court shall give

all parties the opportunity to present facts and legal arguments before the court issues an order establishing jurisdiction.

(c) Except as otherwise provided in subsection (d), the court shall make a record of any communication under this section and promptly inform the parties of the communication and grant them access to the record.

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

New York Commentary

Most states have adopted the proposed language of the Act. The Act does not require that a record be made of substantive discussions between courts. This is a cause for concern because it creates the potential for judicial decision making based on facts unknown to the parties. This possibility is implicitly recognized in the commentary of the drafters of the Act which states in part:

"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."

Two states have adopted alternate language. Section 62-5-704 of the laws of South Carolina states:

"(A) The court may communicate with a court in another state concerning a proceeding arising pursuant to this article. The court shall allow the parties to participate in a discussion between courts on the merits of the proceeding. Except as otherwise provided in subsection (B), the court shall make a record of the communication. When a discussion on the merits of the proceeding between courts is held, the record must show that the parties were given an opportunity to participate, must summarize the issues discussed, and must list the participants in a discussion. In all other matters except as provided in subsection (B), 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. A court may allow the parties to a proceeding to participate in any communications held pursuant to this subsection."

The version that is proposed here is based on section 26-2B-104 of the laws of Alabama which in turn is based upon the Uniform Child Custody Jurisdiction Act. See Domestic Relations Law section 75-i.

SECTION 82.105. COOPERATION BETWEEN COURTS.

(a) In a guardianship proceeding for the appointment of a guardian of the person or

protective 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 respondent;
 - (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 respondent or the incapacitated person subject to a guardianship of the person or protected person;
 - (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 45 C.F.R 160.103 [as amended]~~.
- (b) The court may receive any evidence produced pursuant to subdivision (a) of this section in the same manner that it would admit into evidence the report of a court evaluator after the court evaluator had been subject to cross examination.
- (b) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (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.

New York Commentary

The change to section 82.105(a)(7) is based upon section 37.2-1035 of the laws of Virginia. Paragraph (b) is new. It establishes a standard for the admissibility of evidence obtained pursuant to this statute.

SECTION 82.106. TAKING TESTIMONY IN ANOTHER STATE.

(a) In a guardianship proceeding for the appointment of a guardian of the person or protective 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 guardianship proceeding for the appointment of a guardian of the person or protective 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.

{(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule.}

SECTION 82.201. DEFINITIONS; SIGNIFICANT CONNECTION FACTORS.

(a) In this article~~[article]~~:

(1) "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;

(2) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian of the person; or if none, the state in which the respondent 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 respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(b) In determining under ~~Sections~~sections 82.203 and ~~Section~~section 82.301(e) whether a respondent has a significant connection with a particular state, the court shall consider:

(1) the location of the respondent's family and other persons required to be notified of the ~~guardianship or protective~~ proceeding;

(2) the length of time the respondent at any time was physically present in the state and the duration of any absence;

(3) the location of the respondent's property; and

(4) the extent to which the respondent 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.

SECTION 82.202. EXCLUSIVE BASIS. Subject to section 81.18 of the Mental

Hygiene Law this article [article] provides the exclusive jurisdictional basis for a court of this state to appoint a guardian of the person or issue a protective order for an adult.

New York Commentary

The purpose of this change is to provide that there be no change with regard to the treatment of guardianship orders of foreign countries.

SECTION 82.203. JURISDICTION. A court of this state has jurisdiction to appoint a guardian of the person or issue a protective order for a respondent if:

(1) this state is the respondent's home state;

(2) on the date the petition is filed, this state is a significant-connection state and:

(A) the respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(B) the respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) a petition for an appointment or order is not filed in the respondent's home state;

(ii) an objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and;

(iii) the court in this state concludes that it is an appropriate forum under the factors set forth in Section section 82.206;

(3) this state does not have jurisdiction under either paragraph (1) or (2), the respondent's

home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

- (4) the requirements for special jurisdiction under ~~Section section~~ 82.204 are met.

SECTION 82.204. SPECIAL JURISDICTION.

(a) A court of this state lacking jurisdiction under Section 82.203(1) through (3) has special jurisdiction to do any of the following:

- (1) appoint a guardian of the person in an emergency for a term not exceeding {90} ninety 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 of the person or ~~conservator~~ a guardian of the property for ~~an incapacitated person~~ a person subject to a guardianship of the person or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to ~~Section section~~ 82.301.

(b) If a petition for the appointment of a guardian of the person 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.

SECTION 82.205. EXCLUSIVE AND CONTINUING JURISDICTION.

Except as otherwise provided in ~~Section section~~ 82.204, a court that has appointed a guardian of the person or issued a protective order consistent with this {act} article has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the

appointment or order expires by its own terms.

SECTION 82.206. APPROPRIATE FORUM.

(a) A court of this state having jurisdiction under ~~Section~~ section 82. 203 to appoint a guardian of the person or issue a protective order 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 subsection (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 guardian of the person or issuance of a protective order be filed promptly in another state.

(c) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

- (1) any expressed preference of the respondent;
- (2) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;
- (3) the length of time the respondent was physically present in or was a legal resident of this or another state;
- (4) the distance of the respondent from the court in each state;
- (5) the financial circumstances of the respondent's estate;
- (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; and

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

SECTION 82.207. JURISDICTION DECLINED BY REASON OF CONDUCT.

(a) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue a protective order because of unjustifiable conduct, the court may:

(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 respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian of the person or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering:

(A) the extent to which the respondent 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 ~~Section~~ section 82. 206(c); and

(C) whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of ~~Section~~ section 82. 203.

(b) If a court of this state determines that it acquired jurisdiction to appoint a guardian of the person or issue a protective order 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 ~~[act]~~article.

SECTION 82.208. NOTICE OF PROCEEDING. If a petition for the appointment of a guardianof the person or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state.

SECTION 82.209. PROCEEDINGS IN MORE THAN ONE STATE. Except for a petition for the appointment of a guardianof the person in an emergency or issuance of a protective order limited to property located in this state under section 82.204(a)(1) or (a)(2) of this article, if a petition for the appointment of a guardianof the person or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

- (1) If the court in this state has jurisdiction under ~~Section~~ section 82.203, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to ~~Section~~ section 82.203 before the appointment or issuance of the order.
- (2) If the court in this state does not have jurisdiction under ~~Section~~ section 82.203, whether at the time the petition is filed or at any time before the appointment or issuance of the

order, 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.

**SECTION 82.301. TRANSFER OF GUARDIANSHIP OR CONSERVATORSHIP
TO ANOTHER STATE.**

- (a) A guardian of the person or conservator a guardian of the property appointed in this state may petition the court to transfer the guardianship ~~or conservatorship~~ to another state.
- (b) Notice of a petition under subsection (a) must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian person or conservator a guardian of the property.
- (c) On the court's own motion or on request of the guardian of the person, ~~or conservator~~ the guardian of the property, the incapacitated person subject to the guardianship of the person, or the protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (a).
- (d) The court shall issue an order provisionally granting a petition to transfer a guardianship of the person and shall direct the guardian of the person to petition for guardianship of the person in the other state if the court is satisfied that the guardianship of the person will be accepted by the court in the other state and the court finds that:
- (1) the incapacitated person subject to the guardianship of the person 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 objector has not established that the transfer would be contrary to the interests of the incapacitated person subject to the guardianship of the person; and
- (3) plans for care and services for the incapacitated person subject to the guardianship of the person in the other state are reasonable and sufficient.
- (e) The court shall issue a provisional order granting a petition to transfer a

conservatorship guardianship of the property and shall direct the conservator-guardian of the property to petition for conservatorship guardianship of the property in the other state if the court is satisfied that the conservatorship guardianship of the property will be accepted by the court of the other state and the court finds that:

- (1) the protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in Section section 82. 201(b);
- (2) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and
- (3) adequate arrangements will be made for management of the protected person's property.

(f) The court shall issue a final order confirming the transfer and terminating the guardianship of the person or property or conservatorship upon its receipt of:

- (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 section 82.302; and
- (2) the documents required to terminate a guardianship of the person or property or conservatorship in this state.

SECTION 82.302. ACCEPTING GUARDIANSHIP OR CONSERVATORSHIP TRANSFERRED FROM ANOTHER STATE.

- (a) To confirm transfer of a guardianship of the person or conservatorship guardianship of the property transferred to this state under provisions similar to Section section 82.301, the

guardian of the person or conservator~~guardian of the property~~ must petition the court in this state pursuant to article 81 of the mental hygiene law or article 17-A of the surrogate's court procedure act to accept the guardianship of the person or conservatorship~~guardianship of the property~~. The petition must include a certified copy of the other state's provisional order of transfer.

(b) Notice of a petition under subsection (a) must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian of the person or issuance of a protective order 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) On the court's own motion or on request of the guardian of the person or conservator~~guardian of the property~~, the incapacitated person subject to the guardianship of the person or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (a).

(d) The court shall issue an order provisionally granting a petition filed under subsection (a) unless:

(1) an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or
(2) the guardian of the person or conservator~~guardian of the property~~ is ineligible for appointment in this state.

(e) The court shall issue a final order accepting the proceeding and appointing the guardian of the person or conservator~~guardian of the property~~ as guardian of the person or conservator~~guardian of the property~~ 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 section

82.301 transferring the proceeding to this state.

(f) Not later than [90] ninety days after issuance of a final order accepting transfer of a guardianship of the person or conservatorship guardianship of the property, the court shall determine whether the guardianship of the person or conservatorship guardianship of the property needs to be modified to conform to the law of this state.

(g) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian of the person or conservator guardian of the property.

(h) The denial by a court of this state of a petition to accept a guardianship of the person or conservatorship guardianship of the property transferred from another state does not affect the ability of the guardian of the person or conservator guardian of the property to seek appointment as guardian of the person or conservator guardian of the property in this state under ~~insert statutory references to this state's ordinary procedures law for the appointment of guardian or conservator~~ article 81 of the mental hygiene law or article 17-A of the surrogate's court procedure act if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

SECTION 82.401. REGISTRATION OF GUARDIANSHIP ORDERS

APPOINTING A GUARDIAN OF THE PERSON. If a guardian of the person by whatever name designated has been appointed in another state and a petition for the appointment of a guardian of the person is not pending in this state, the guardian of the person appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship of the person order in this state by filing as a foreign judgment in a court, in any appropriate [county]county of this state, certified copies of the order and letters of office.

SECTION 82.402. REGISTRATION OF PROTECTIVE ORDERS. If a conservator guardian of the property, has been appointed in another state and a petition for a protective order is not pending in this state, the conservator guardian of the property appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any [county]county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. Thereafter, said guardian of the property shall comply with the requirements of mental hygiene law section 81 (a) (6) (vi) with regard to any real property of the protected person in this state.

New York Commentary

The proposed New York modification would require that a guardian of the property appointed in another state who registers that guardianship in New York file a statement concerning real property in the same manner as any other guardian. This modification is based on section 30-3918 of the laws of Nebraska.

SECTION 82.403. EFFECT OF REGISTRATION.

(a) Upon registration of a guardianship an order appointing a guardian of the person or protective order from another state, the guardian of the person or conservator guardian of the property may exercise in 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 selling real property and, if the guardian of the person or conservator guardian of the property 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 [act]article and other law of this state to enforce a registered order.

New York Commentary

This proposed modification would make it clear that Article 17 of the Real Property Actions and Proceedings Law does not apply to guardians appointed in other jurisdictions or authorized in those jurisdictions to sell real property in New York.

SECTION 82.501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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.

SECTION 82.502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This ~~[act]~~ article 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).

TRANSITIONAL PROVISION.

(a) This ~~[act]~~ article applies to ~~guardianship and protective~~ proceedings begun on or after [the effective date].

(b) Sections 82.101 through 82.103 and 82.301 through 82.302, 82.401 through 82.403 and
85.501 through 85.502~~[Articles]~~ 1, 3, and 4 and Sections 501 and 502 apply to proceedings
begun before [the effective date], regardless of whether a guardianship or protective order has
been issued.

EFFECTIVE DATE. This [act] takes effect.....

SURROGATE'S COURT PROCEDURE ACT

§ 1758. Court jurisdiction

1. The jurisdiction of the court to hear proceedings pursuant to this article shall be subject to article 82 of the mental hygiene law.
2. After the appointment of a guardian, standby guardian or alternate guardians, the court shall have and retain general jurisdiction over the mentally retarded or developmentally disabled person for whom such guardian shall have been appointed, to take of its own motion or to entertain and adjudicate such steps and proceedings relating to such guardian, standby, or alternate guardianship as may be deemed necessary or proper for the welfare of such mentally retarded or developmentally disabled person.

MENTAL HYGIENE LAW

§ 81.18. Foreign guardian for a person not present in the state

Where the person alleged to be incapacitated is not present in the state and a guardian, by whatever name designated, has been duly appointed pursuant to the laws of any other ~~state, territory, or~~ country where the person alleged to be incapacitated resides to assist such person in property management, the court in its discretion, may make an order appointing the foreign guardian as a guardian under this article with powers with respect to property management within this state on the foreign guardian's giving such security as the court deems proper. In its discretion, the court may utilize the provisions of article 82 of the mental hygiene law.

MENTAL HYGIENE LAW

§ 81.04. Jurisdiction

(a) If after a hearing or trial in accordance with the provisions of this article it is determined that relief under this article is necessary, the supreme court, and the county courts outside the city of New York, shall have the power to provide the relief set forth in this article subject to the jurisdictional requirements of section 81.18 of this article and Article 82 of the mental hygiene law.

1. for a resident of the state;
2. for a nonresident of the state present in the state;
3. for a nonresident of the state pursuant to section 81.18 of this article.

(b) Notwithstanding the provisions of subdivision (a) of this section, when it appears in any proceeding in the surrogate's court that a person interested in an estate is entitled to money or property as a beneficiary of the estate, or entitled to the proceeds of any action as provided in section 5-4.1 of the estates, powers and trusts law, or to the proceeds of a settlement of a cause of action brought on behalf of an infant for personal injuries, ~~and that the interested person is a resident of, [fig 1] is physically present, or has any property in, the county in which the proceeding is pending and is allegedly incapacitated with respect to property management under the provisions of this article,~~ and the surrogate's court is satisfied after a hearing or trial in accordance with the provisions of this article that the interested person is incapacitated with respect to property management, then subject to section 81.18 of this article and article 82 of the mental hygiene law, the surrogate's court shall have the power to order relief for that person with respect to property management in accordance with the provisions of this article.

MEMORANDUM IN SUPPORT

TITLE OF BILL:

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA)

PURPOSE:

Guardianship orders of one state are not entitled to the grant of full faith and credit by any other state. Therefore, one state's guardianship and protective orders do not have to be recognized by another. And, there are more than 50 guardianship systems in the United States. This means that if an adjudicated incapacitated person is taken out of New York for any reason, the New York guardian loses all authority to act as guardian under New York law, even in an emergency. Adult guardianship jurisdiction issues often arise in situations involving snowbirds, visits to relatives/friends outside of the state, elderly kidnapping ("granny-napping"), multi-state health care providers, long-distance caregiving arrangements, vacations and wandering. This can, for example, make granny-napping cases very difficult to litigate because the courts of multiple states may claim to have jurisdiction and there are often conflicting results.

The UAGPPJA provides a uniform set of rules that (1) identify one singular state court to adjudicate first time guardianship petitions; (2) establish a system of transferring existing guardianship appointments from one state to another; and (3) establish a system of recognizing and enforcing guardianship orders of one state in another.

SUMMARY OF PROVISIONS:

The Uniform Law Commission approved the Uniform Adult Guardian Jurisdiction Protective Proceedings in 2007. Twenty-nine states and the District of Columbia have enacted the UAGPPJA. And, for 2012, the Act has been introduced in three more states, i.e., Maine, Massachusetts and Ohio. The version of the UAGPPJA that is proposed for New York provides for some changes to the language set forth by the Uniform Law Commission.

It is proposed that the UAGPPJA will appear in New York's Consolidated Laws as Article 82 of the Mental Hygiene Law. Because this statute would provide uniform rules for both Article 81 of the Mental Hygiene Law and Article 17-A of the Surrogate's Court Procedures Act, Section 1758 of the Surrogate's Court Procedure Act regarding court jurisdiction will also be amended to indicate the application of the UAGPPJA under that section.

The proposed Article 82 of the Mental Hygiene Law addresses three main guardianship issues where multiple states are involved. Section 82.201 to Section 82.209 provides guidance for New York courts in determining whether it has primary jurisdiction over an "alleged incapacitated person" ("AIP"). Under the UAGPPJA , except in emergency cases where special jurisdiction may be available, primary jurisdiction is determined by three levels of priority, starting with the "Home State," then a "Significant Connection State," and lastly a state with "other jurisdiction." Section 82.301 and Section 82.302 of the UAGPPJA provides a streamlined procedure for transferring a guardianship or conservatorship to and from another state. Section 82.401 to Section 82.403 of the UAGPPJA authorizes an appointed guardian or conservator to register a

guardianship order from another state and upon registration, the guardian or conservator may exercise all the powers authorized in the order except as prohibited under the laws of New York.

JUSTIFICATION:

As in most states, New York has jurisdiction to appoint a guardian of an individual who is a resident of New York or who simply is physically present in the state. Extensive and costly litigation over jurisdiction may result where the domicile of the AIP is difficult to determine. In addition, jurisdiction based merely on the physical presence of an AIP in New York encourages the occurrence of granny-napping. The UAGPPJA has widespread support from organizations such as Naela (National Academy of Elder Law Attorneys), American Bar Association, National Guardianship Foundation, Alzheimer's Association, National College of Probate Judges, Conference of Chief Justices and Conference of State Court Administrators.

In cases where a guardianship or conservatorship has been established and an incapacitated person is to be moved to New York, transferring such existing guardianship or conservatorship is not available. Like many states, New York will require that a new petition for guardianship be commenced in New York. This will result in added costs and delays because a redetermination has to be made as to the individual's capacity and whether the guardian to be appointed is appropriate. This also discourages caregivers from moving an incapacitated individual to a better living arrangement, such as a locale that is closer to a caregiver. Further, the process also takes time and attention away from the caregiver's primary task of caring for the incapacitated person.

The enactment of the UAGPPJA will result in substantial benefits to New York State and the parties to a guardianship matter involving multi-state jurisdiction issues. The uniform rules create an expeditious and predictable process to which incapacitated persons and their caregivers may seek either initial guardianship appointments, transfer of existing guardianships, or recognition of out of state orders in New York. The UAGPPJA will save money for New York State, will conserve judicial resources, and will minimize the cost to the incapacitated person. For example, in an often cited matter involving multi-state guardianship issues, *Matter of Glasser*, 2006 WL 510096 N.J. Super. Ct. Ch. Div. (2006), the legal costs of litigating just the initial jurisdictional issues was approximately \$1.5 million. Further, the UAGPPJA will reduce incidences of elder abuse.

Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

by Ronald A. Fatoullah, Esq. and Yan Lian Kuang-Maoga, Esq.

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA or “the Act”) provides a set of uniform rules that address jurisdiction and related issues in adult guardianship cases where multiple states are involved. The Act has widespread support from organizations such as the National Academy of Elder Law Attorneys, the National Guardianship Foundation, the Alzheimer’s Association, the Conference of Chief Justices and Conference of State Court Administrators, the Council of State Governments, and the American Bar Association.¹ Its impact will be most effective if all states enact these rules or some variation of them. Currently, 29 states and the District of Columbia have enacted the UAGPPJA², which rose from just five states in 2008. For 2012, the Act has also been introduced in three more states, i.e., Maine, Massachusetts and Ohio. New York is one of the few states left to act on this legislation.

With an increasingly mobile society, multi-state guardianship issues are not uncommon. These issues arise among snowbirds who may be residents of New York but spend their winters in Florida, caregivers who may be moving sick family members in or out of New York, individuals who may be utilizing out of state health care providers, individuals who may wander in or out of New York, and elderly persons who are victims of “granny snatching” into or outside of New York.³

UAGPPJA Objectives

We have more than 50 guardianship systems in the United States. The UAGPPJA does not change a state's substantive rules regarding guardianship. The objectives of the Act are as follows:

- (1) To identify one singular state court to adjudicate first time guardianship petitions;
- (2) To establish a system of transferring existing guardianship appointments from one state to another; and
- (3) To establish a system of recognizing and enforcing guardianship orders of one state in another.

UAGPPJA Basics

The UAGPPJA addresses three main issues that arise when multiple states are involved in an adult guardianship matter: First, which state court has priority jurisdiction over a guardianship petition. Second, how can an existing guardianship be transferred to another state. Lastly, how guardians can enforce orders from one state in another state.

Jurisdiction (Article 2)

Like most states, New York has jurisdiction to appoint a guardian of an individual who is a resident of New York or who simply is physically present in the state.⁴ Extensive and costly litigation over jurisdiction may result where the domicile of the "alleged incapacitated person" ("AIP") is difficult to determine. For example, this situation has arisen when the AIP may live for an equal amount of time in two different states or when it is unclear whether the AIP has the capacity to form an intent to change domicile. In *Matter of Rose Jacobs*, 717 A.2d 432 (N.J. Ch. Div. 1998), the New Jersey court found lack of jurisdiction and dismissed the action after a lengthy and costly process where the court analyzed the concept of domicile and capacity to

choose the domicile of Rose Jacobs. Rose lived in Florida until 1989, then intermittently in Florida and New York and then in Florida for three years prior to the petition for guardianship. Rose Jacobs visited her daughter in New Jersey, and during her visit, her daughter petitioned for guardianship in New Jersey. Her son in Florida sought dismissal of the petition arguing that Rose was domiciled in Florida. The court in New Jersey agreed with son and ultimately declined jurisdiction.

In addition, jurisdiction based merely on the physical presence of an AIP in New York encourages the occurrence of “granny snatching,” i.e., the unauthorized removal or retention of an elder person.⁵ In Matter of Verna HH., 756 N.Y.S.2d 300 (3rd Dept. 2003), Verna the AIP resided in Kentucky with respondent, one of her children, for about 10 years prior to the guardianship petition. The petitioner, another child, traveled to Kentucky and brought Verna to New York and thereafter petitioned for guardianship over Verna’s person and property. The Supreme Court, agreed with respondent, finding lack of jurisdiction because Vena neither had property in, nor sufficient contacts with New York to confer jurisdiction. However, on appeal, the Appellate Division reversed and found jurisdiction on the mere physical presence of Verna in New York.

The UAGPPJA’s Article 2 provides guidance for New York courts in determining whether they have primary jurisdiction over an AIP. Under Article 2, except in emergency cases where special jurisdiction may be available, primary jurisdiction is determined by three levels of priority:

First Priority – Home State: A “home state” is a state in which the AIP was physically present, including any period of temporary absence, for at least six consecutive months immediately prior to the commencement of the guardianship proceeding.⁶ Under

the home state rule, the court in *Matter of Rose Jacobs* would have easily determined that Florida is her home state without requiring an extensive analysis of her domicile. And in *Matter of Verna HH.*, the Supreme Court could have found Verna's home state to be Kentucky in short order, thereby eliminating the extensive cost and time to all parties as well as conserving judicial resources.

Second Priority – Significant Connection State: A “significant connection state” is a state, other than the home state, with which the AIP has a significant connection other than mere physical presence, and in which substantial evidence concerning the AIP is available.⁷ To determine whether a state is a significant connection state, courts are to consider the following factors: (i) the location of the AIP’s family and other parties required to be notified of the guardianship or protective proceeding, (ii) the length of time the respondent was at any time physically present in the state and the duration of any absences, (iii) the location of the respondent’s property, (iv) the extent to which the respondent has other ties to the state such as voting registration, filing of state or local tax returns, vehicle registration, driver’s license, social relationships, and receipt of services.⁸

However, a significant connection state only has jurisdiction over an AIP if (a) an AIP does not have a home state or (b) the home state declined jurisdiction because it has found the “significant connection state” to be a more appropriate forum.⁹ Additionally, in consideration of cases where all parties are in agreement concerning which court should hear the case, a significant connection state may have jurisdiction where (a) no petition has been filed or pending in a home state or other significant connection state, (b) no objections to the court’s jurisdiction have been filed by a person required to be notified of the proceeding, and (c) the significant connection state determines that it is an

appropriate forum.¹⁰ The issue of whether a state is an appropriate forum is determined by all relevant factors, including (i) any expressed preference of the respondent, (ii) whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation, and (ii) the length of time the respondent was physically present in or was a legal resident of the state or another state, etc.¹¹

Third Priority – Other jurisdiction: A court in a state that is neither a home state or a significant-connection state may have jurisdiction if (a) the home state and all significant connection states have declined jurisdiction, or (b) the AIP does not have a home state or significant connection state.¹²

Under the UAGPPJA, once a court has jurisdiction, jurisdiction continues until the proceeding is terminated or transferred.¹³ Notwithstanding the priority rules, if the UAGPPJA is enacted by New York, special jurisdiction for limited purposes would be available in a New York court even when it does not have priority jurisdiction.¹⁴ For example, a New York court would have special jurisdiction to appoint a guardian for a term no longer than 90 days for an AIP who is physically present in the state and an emergency requires the appointment of such guardian.

Transfer of Guardianship or Conservatorship (Article 3)

In cases where a guardianship or conservatorship has been established and an incapacitated person is to be moved to another state, transferring such existing guardianship or conservatorship is not generally available. Like many states, New York will require that a new petition for guardianship be commenced in New York. This results in added cost and time spent for the incapacitated person because a redetermination has to be made as to the individual's

capacity and whether the guardian to be appointed is appropriate. This may discourage caregivers from moving an incapacitated individual to a better living arrangement, such as a locale that is closer to a caregiver. This also takes time and attention away from the caregiver's primary task of caring for the incapacitated person.

Article 3 of the UAGPPJA provides a streamlined procedure for transferring a guardianship or conservatorship to and from another state. Generally, the steps for transferring under the UAGPPJA are as follows:

- (1) Petition for transfer in the court of the transferring state – The guardian or conservator files a petition in the transferring state.¹⁵ Notice of the petition is to be given to person(s) who would be entitled to notice of the original petition for guardianship.¹⁶ A hearing on the petition regarding the transfer may be requested or heard upon the court's own motion.¹⁷
- (2) Factors for the court of the transferring state to consider – The court of the transferring state must be satisfied that (a) the incapacitated person is physically present in or is reasonably expected to move permanently to another state, (b) an objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interest of the incapacitated person, (c) adequate arrangements have been made for the incapacitated person and his/her property in the new state, and (d) the case will be accepted in the new state.¹⁸
- (3) Approving transfer order – A court of the transferring state will issue a provisional order approving the transfer but will not issue a final order dismissing the case

until it receives the provisional order from the court of the accepting state accepting the transfer.

- (4) Petition for transfer in the court of the accepting state – Upon issuance of the provisional order from the court of the transferring state, a guardian or conservator will file a petition in the court of the accepting state.¹⁹ In this case, notice of the petition must be given to those who are entitled to notice of the original petition for appointment in *both* the transferring and accepting state.²⁰ Again, a hearing on the petition may be held upon request or heard on the court's own motion.²¹
- (5) Accepting transfer order – The court of the accepting state must issue a provisional order accepting the transfer unless it is established that (a) the transfer would be contrary to the incapacitated person's interest or (b) the guardian or conservator is ineligible for appointment in the accepting state.²²
- (6) Filing accepting order - The provisional order accepting the transfer must be filed in the court of the transferring state.²³
- (7) Final order terminating proceeding – The court of the transferring state must issue a final order terminating the proceeding, subject to any requirements of termination such as filing of a final report or accounting.²⁴
- (8) Filing final order of termination – The final order terminating the proceeding in the court of the transferring state must be filed with the court of the accepting state.
- (9) Final order of acceptance - The court of the accepting state must issue a final order accepting the case and appoints the guardian or conservator who petitioned for the transfer.²⁵

(10) Modification of guardianship – The court of the accepting state has an opportunity within a period of time after accepting the transferred guardianship to determine whether the guardianship or conservatorship needs to be modified to conform to the laws of the accepting state. This opportunity is important especially if the transfer was between states that have differing laws or practice dealing with guardianships.

Registration and Recognition of Orders from Other States (Article 4)

The laws on guardianship and protective proceedings are exempt from the full faith and credit clause of the U.S. Constitution. Therefore, one state's guardianship and other protective orders do not have to be recognized by another state. A guardian appointed by an out of state court will have to petition for guardianship in New York.

For an incapacitated person who is not present in the state and for whom a guardian has been appointed in another jurisdiction, New York courts can appoint such guardian for the limited purpose of assisting in property management of any property of the incapacitated person within New York State.²⁶ This process is not in recognition of the out of the state guardianship, but merely is a mechanism for handling financial matters in New York State. Conversely, for an incapacitated person who does not have property in New York, his or her out of state guardian is not authorized to make decisions over his or her person if the incapacitated person is in New York and decisions over his or her person is needed to be made. (Under the Family Health Care Decisions Act, the guardian may be able to make health care decisions on behalf of the incapacitated person if the guardian fits under the list of surrogates provided under the act such as the incapacitated person's spouse, children or sibling). A petition for guardianship would have to be made based on the person's physical presence in New York. This again imposes additional cost and time constraints on the incapacitated person and the guardian.

Article 4 of the UAGPPJA authorizes a guardian or conservator to register a guardianship order from another state and upon registration, the guardian or conservator may exercise all the powers authorized in the order except as prohibited under the laws of the state in which the order was registered.²⁷

Benefits Of Enacting the UAGPPJA

The enactment of the UAGPPJA will result in substantial benefits to New York State and the parties in a guardianship matter involving multiple states. The uniform rules creates an expeditious and predictable process to which incapacitated persons and their caregivers may seek either initial guardianship appointment, transfer of existing guardianship, or recognition of out of state orders in New York. The UAGPPJA will save money for New York State, will conserve judicial resources, and will minimize the cost to the incapacitated person. Furthermore, the rules under the UAGPPJA also help to reduce incidences of elder abuse. In “Nine Ways to Reduce Elder Abuse Through Enactment of The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act,” Lori A. Stiegel and Erica F. Wood, described how the UAGPPJA reduces elder abuse including the following:

- (1) Reducing the incidents of granny snatching by eliminating the mere physical presence of an incapacitated individual as a basis of jurisdiction;
- (2) Enabling a court to decline to exercise jurisdiction where jurisdiction exists because of an unjustifiable conduct such as granny snatching;
- (3) Requiring a court to consider elder abuse when making a determination of the issue of an appropriate forum;
- (4) Requiring a court to consider its own ability to monitor the conduct of the guardian when making a determination of the issue of an appropriate forum; and

(5) Establishing transfer procedures that could remove individuals from abusive situations.

¹ [http://www.nccusl.org/Act.aspx?title=Adult Guardianship and Protective Proceedings Jurisdiction Act](http://www.nccusl.org/Act.aspx?title=Adult%20Guardianship%20and%20Protective%20Proceedings%20Jurisdiction%20Act)

² Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia.

³ Adult Guardianship Jurisdiction Factsheet dated October 2010 by the Alzheimer's Association available at http://www.alz.org/national/documents/Adult_Guardianship_Factsheet.pdf

⁴ MHL § 81.04(a)(2); Matter of Verna H.H., 302 A.D.2d 714, 756 N.Y.S.2d 300 (3d Dep't 2003)

⁵ Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, by Lori A. Stiegel, J.D., Senior Attorney, and Erica F. Wood, Assistant Director, American Bar Association Commission on Law and Aging, available at

http://www.naela.org/App_Themes/Public/PDF/Advocacy%20Tab/Uniform%20Guardianship%20Act/Nine%20Ways%20to%20Reduce%20Elder%20Abuse.pdf

⁶ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 201(a)(2).

⁷ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 201(a)(3).

⁸ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 201(b).

⁹ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 203(2)(A).

¹⁰ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 203(2)(B).

¹¹ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 206(c).

¹² Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 203(3).

¹³ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 205.

¹⁴ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 204.

¹⁵ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 301(a).

¹⁶ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 301(b).

¹⁷ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 301(c).

¹⁸ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 301(d) & (e).

¹⁹ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 302(a).

²⁰ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 302(b).

²¹ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 302(c).

²² Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 302(d).

²³ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 301(f).

²⁴ Id.

²⁵ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 302(e).

²⁶ Mental Hygiene Law § 81.18.

²⁷ Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act Section 401 & 402.

**Reported Cases on Multi-state Guardianship Jurisdiction Issues
Supporting Need for the *Uniform Adult Guardianship and
Protective Proceedings Jurisdiction Act* (UAGPPJA),
Sorted by First State Involved**

American Bar Association Commission on Law and Aging
November 2010

Cases identified through National Guardianship Association *Annual Legal Reviews*

State where case was heard is shown in italics

This chart originally was prepared in 2009 for the ABA Commission on Law and Aging *Joint Campaign for Uniform Guardianship Jurisdiction*, with funding from the ABA Section of Real Property, Trust and Estate Law; the American College of Trust and Estate Counsel Foundation; and the Uniform Law Foundation. The chart was updated in November 2010.

UAGCPJA Jurisdiction	Case Issue	Case	First State Involved	Second State Involved	Involvement	Case Summary:	Human Face Resolution	UAGPPJA
<i>In the Matter of the Guardianship of Richardson,</i> 28 P.3d 621 (2000)	<i>In the Matter of the Guardianship of Richardson,</i> 28 P.3d 621 (2000)	OK	CO	OK	Under the Act, Colorado would be the home state. The respondent had no connection with Oklahoma other than her grandparents. Consideration of the mother's objections	Veronica Richardson was 22 years old and partially incapacitated. Her parents were divorced, and both lived in Colorado. Richardson lived with her mother in Colorado until her paternal grandparents took her to Oklahoma without her mother's permission. The grandparents were awarded limited guardianship of Richardson by an Oklahoma court. The mother sought reconsideration and dismissal of the limited guardianship order. The Oklahoma court concluded that the Colorado order dissolving the parents' marriage was entitled to full faith and credit in Oklahoma, that the mother was the "natural guardian" over her unemancipated daughter, and that	Under the Act, Colorado would be the home state. The respondent had no connection with Oklahoma other than her grandparents. Consideration of the mother's objections	Under the Act, Colorado would be the home state. The respondent had no connection with Oklahoma other than her grandparents. Consideration of the mother's objections

UAGCJPJA Issue	Case	First State Involved	Second State Involved	Case Summary; Human Face	UAGCJPJA Resolution
				<p>Human Face: Veronica Richardson was a young woman whose parents and lifelong contacts were in Colorado. She was caught in inter-generational conflict between her mother and her grandparents, who lived in different states. Speedy resolution was in her best interest.</p>	<p>the lower court had therefore erred in appointing the grandparents as limited guardians.</p> <p>Under the Act, DC would be the home state, and Orshansky's presence in New York could not be the basis for jurisdiction. The Act would hasten resolution of the jurisdictional issue.</p>

UAGGPA Issue	Case Involved First State Involved Second State Involved	Case Summary: Human Face; Case Summary;	UAGPJA Resolution
		<p>Human Face: Mollie Orshansky was an 87-year-old retired federal employee who had gained fame as originator of the “poverty line.” She had lived by herself in DC for 40 years. She has no family in DC, but had two sisters and nieces and nephews in New York City, and had planned to retire there in an apartment she had purchased. While the main thrust of the case was the recognition of her advance planning documents, the jurisdictional issue was an important subplot.</p>	<p>Under the Act, Florida would be home state. The New Jersey court readily could have identified Florida as the home state without a protracted analysis of domicile.</p>
Jurisdiction	<i>Matter of Rose Jacobs,</i> 717 A.2d 432 (N.J. Ch. Div. 1998)	<p>Case Summary: Rose Jacobs had daughter in New Jersey and son in Florida. She lived in Florida until her husband died in 1989, then intermittently in Florida and New York, and then in Florida for three years. In 1997 she was sent to New Jersey to stay with daughter, but had a return ticket and did not pack all her belongings. Daughter filed petition for guardianship in New Jersey, and son sought dismissal on grounds that respondent was domiciled in Florida. The court analyzed the concept of domicile and capacity to choose domicile, and determined that Rose Jacobs was domiciled in Florida, that court had no jurisdiction, and dismissed the action. (There was no competing Florida filing.)</p> <p>Human Face: Rose Jacobs was 85 years old. Her son and daughter fought over control of their mother, and played this out in court over the filing of a guardianship petition. Quick resolution of such cross-border family disputes is essential for the elder caught in the middle, and to avoid excessive litigation costs.</p>	<p>Under the Act, Florida would be the</p>
Jurisdiction	<i>Guardianship of Betty Pat</i>	<p>Case Summary: While living in Florida, Betty executed a health care directive naming her son as agent and nominating him as guardian. Florida</p>	

UAGCPJA Issue	Case	First State Involved	Second State Involved	Case Summary: Human Face Resolution UAGPJA
<p>UAGCPJA</p> <p>Issue</p> <p><i>Graham et al v Luke Graham, 963 So.2d 275 (Fl. Dist. Ct. App. 2007); Lawrence Graham v. Florida Dept. Children & Families, and Catholic Charities of the Diocese of Palm Beach, Inc., 970 So.2d 438 (Fl. Dist. Ct. App.2007)</i></p>				<p>Human Face: Son moved Betty to a locked Alzheimer's unit in several different locations, under different pseudonyms. Betty did not have Alzheimer's, and Florida agency petition alleged that the son's purpose was to prevent his brother from seeing her. Son then took her to California without notice to anyone, and refused to reveal her location to the court, arguing at the same time that the court did not have jurisdiction because she had left the state and could not be located. Court held son in criminal contempt, stating that his "improper act of . . . removing Betty from Florida to a 'secret location' cannot divest the Florida court of jurisdiction."</p>
<p>Recognition</p> <p><i>In Re Guardianship of Margaret Enos, 670 N.E.2d 967 (1996)</i></p>	FL	MA		<p>Case Summary: Margaret Enos lived in Florida, where a private non-profit agency was appointed her guardian. Without authority or notice, her daughter took her to a Massachusetts nursing home, claiming that the agency had neglected Enos. Agency, with Florida court order, sought return of Enos to Florida. Daughter filed for guardianship in Massachusetts. Massachusetts court ordered surrender of Enos to agency, for return to Florida, and dismissed daughter's petition. Daughter appealed, contending that Florida</p> <p>Under the Act, the Florida guardianship agency could register and seek recognition in Massachusetts, avoiding lengthy litigation.</p>

UAGCPJA Issue	Case Involved First State Involved Second State Involved Case Summary; Human Face	UAGPJA Resolution
<p>Jurisdiction <i>Dakuras v. Edwards</i>, 312 F.3d 256 (7th Cir. 2002)</p> <p>Case</p> <p>Issue</p> <p>First State Involved</p> <p>Second State Involved</p> <p>Case Summary: Margaret Enos was 90 years old. All of her connections except her daughter were in Florida, yet she was suddenly uprooted from Florida and taken to a Massachusetts facility. Her ability to travel back was questioned as possible “unacceptable risk.” Moreover, the guardian agency had to spend estate funds to petition the Massachusetts court for her return and custody. While daughter alleged agency was neglecting her mother, she should have made this argument in Florida.</p> <p>Human Face: Margaret Enos was not entitled to recognition in Massachusetts. Appellate court affirmed, recognized Florida guardianship and stated that Florida had jurisdiction.</p>	<p>Human Face: Relatives moved Calder to Ohio, where they had her declared</p> <p>Case Summary: Dakuras lived with his girlfriend, Calder, in Illinois. She had a stroke and her relatives from Ohio moved her to Ohio, where they filed for and were appointed as guardians. They placed her in assisted living. Dakuras then sued them, claiming that the relatives had taken and refused to return valuable property of his and would not let him see Calder. He brought his case in federal court because of diversity jurisdiction. The district court ruled that the guardians had no authority to change Calder’s domicile from Illinois to Ohio and dismissed the case for lack of diversity jurisdiction. Dakuras appealed. The appellate court concluded that guardians do have the authority to change the domicile of their wards. (The court also said the guardians had bad motives in moving Calder to Ohio and that they were estopped from claiming that they had not changed her domicile.) The appellate court ordered the district court to reinstate Dakuras’ diversity suit.</p> <p>Since this case involved Federal court diversity jurisdiction, the Act would not apply. There are insufficient facts to determine the effect of the Act if the case had been brought in state court.</p>	

UAGCPJA Issue	Case Involved First State Involved Second State Involved	IL MO <i>In the Matter of Steven Prye, 169 S.W.3d 116 (Mo. Ct. App. 2005)</i>	Case Summary: Steven Prye, with Tennessee roots, was involuntarily committed in Illinois, and had Illinois public guardian (Office of State Guardian), and was placed in Missouri facility. There was a petition for a Missouri guardian. Missouri lower court failed to recognize Illinois public guardian. Missouri appellate court found Illinois guardianship was entitled to recognition & enforcement by Missouri courts under Full Faith and Credit Clause of U.S. Constitution and Missouri statute. Human Face: Steven Prye was a 52-year-old professor with mental illness. The Illinois Office of State Guardian facilitated an evaluation at Washington University in St. Louis, Missouri, which revealed Prye suffered from Schizo affective Disorder, Bi-polar type. He was in and out of psychiatric wards with numerous behavior problems and violent incidents. Recognition of the Illinois guardianship could have expedited proper treatment.	Case Summary: Myrtle Dunn was an Illinois resident with an Illinois guardian, who sought treatment for mental illness in a Missouri hospital. The hospital filed a petition for electroconvulsive therapy, as required by Missouri law. The probate court dismissed the petition for lack of jurisdiction, finding that only guardians or conservators may petition for such treatment, and that Missouri did not recognize a guardian appointed by another state. The appellate court found that the probate court erred in refusing to recognize the
UAGCPJA Case Summary: Human Face; Case Involved				
			Case Summary: Steven Dakuras, placed her in an assisted-living facility there, and prevented Dakuras from having any contact with her. Motives and merits of the move are unclear, but case turned on determination of domicile for purposes of federal diversity jurisdiction.	Under Act, the Illinois guardian could have registered the order in Missouri, and it would have been recognized and enforced without need of litigation.

UAGCPJA Issue	Case Transfer	Case Summary: <i>In Re Guardianship of Jane E.P.</i> , 700 N.W.2d 863 (Wis. 2005)	First State Involved	Second State Involved	Case Summary: Jane E.P. was an incapacitated person living in a nursing home in Illinois, near the Wisconsin border. Jane's guardian, her sister, wanted to move her to a private nursing facility in Wisconsin, close to relatives. A Wisconsin county department of social services filed a petition for guardianship and protective placement, naming the sister as guardian. The county unified board sought dismissal based on a Wisconsin statute requiring respondent to be a resident at the time of filing. The circuit court dismissed the petition. The court of appeals reversed, determining that, as applied to Jane, the statute violated her constitutional right to interstate travel. The court reasoned that since she was incapable of living outside a facility, she could not move to Wisconsin to become a resident, as she would have nowhere to live. Wisconsin Supreme Court vacated the court of appeals decision and remanded to the circuit court. The Supreme Court recommended that the standards articulated in the National College of Probate Judges Advisory Committee on Interstate Guardianships Final Report be used to resolve such interstate cases of transfer of guardianships from one state to another, and governing communication and cooperation between courts.	Human Face: Summary, Case Involved	Illinois guardianship. The court noted that recognition is required by the Full Faith and Credit clause of the U.S. Constitution, and cited <i>In Re Prys</i> .	The Act would enable Jane's guardianship to be transferred expeditiously.	UAGCPJA Resolution

UAGCJPJA Issue	Case First State Involved Second State Involved	IN <i>In Re: Guardianship of Elizabeth Ann Replogle, 841 N.E.2d 330 (Ohio Ct. App. 2005)</i>	<p>Case Summary: Indiana court appointed Elizabeth's mother as guardian. Sister petitioned for removal, stating allegations of abuse. Elizabeth was moved to a nursing home in Ohio. Indiana court ordered the guardian to return her to Indiana. Another party (relationship unknown) filed for emergency guardianship in Indiana, and was appointed ex parte. Sister then filed a motion asking the Ohio court to give full faith and credit to the Indiana guardianship. Ohio court terminated Ohio guardianship and advised guardian to return Elizabeth to Indiana. Ohio trial court said Elizabeth's best interests could more appropriately be determined by the Indiana court. Appellate court affirmed, noting that the trial court in Ohio properly deferred to the Indiana court as a better forum to determine best interests.</p> <p>Human Face: Elizabeth Replogle was a 41-year-old adult resident of IN with mental retardation. She was suddenly moved to an Ohio nursing home. The Ohio trial court noted there was "something fishy" about the Ohio petition for emergency guardianship; and appellate court said the record indicates the possibility that the guardian moved Elizabeth to Ohio "solely for the purpose of avoiding the termination of her status as guardian in Indiana."</p>
			<p>Case Summary: Jane's guardian and many of Jane's relatives lived just across the Illinois border in Wisconsin. The question in this case was how to promote comity between the states and an outcome in Jane's best interest -- how to provide for an orderly transfer to Wisconsin where she would be closer to her family.</p> <p>Human Face: Jane's guardian and many of Jane's relatives lived just across the Illinois border in Wisconsin. The question in this case was how to promote comity between the states and an outcome in Jane's best interest -- how to provide for an orderly transfer to Wisconsin where she would be closer to her family.</p>

UAGGPA Issue	Case Recognition	First State Involved Second State Involved	Case <i>Leilla Hilkmann v. Dirk H. Hilkmann, 858 A.2d 58 (Pa. 2004)</i>	Case Summary: Daniel Hilkman was an 18-year-old adult with a neurological impairment. His parents were divorced, with mother and Daniel living in Israel, and father in Pennsylvania. School asked mother to seek guardianship to make decisions about curriculum. She filed and was appointed under Israeli law, with no notice of the proceedings to Daniel. Father objected, and after Daniel's visit to Pennsylvania, kept him there and enrolled him in school. Mother filed petition in Pennsylvania court to enforce Israeli order. Father challenged Pennsylvania court's jurisdiction for such enforcement. Trial court granted mother's petition on grounds of comity. Appellate court reversed, stating that Israeli guardianship procedure differed substantially, particularly that Daniel was not given notice. Pennsylvania Supreme Court affirmed appellate decision, analyzing principle of comity and its criteria, noting lack of procedure in Pennsylvania law for recognition and transfer of foreign guardianship orders. Noted need for approval of the exporting court and notice to the incapacitated person. The court stated that the Israeli order was for the limited purpose of curriculum decisions, not removal from the country, which would require procedural protections.	Case Summary: Daniel was a young adult with cognitive impairment, who attended school and was preparing for employment. He "became upset" when he learned of the guardianship. As his parents argued across international borders over where he would live and go to school, he had no opportunity to participate and express his opinions.	Jurisdiction	Under the Act, designation of Massachusetts as the
UAGPJA Issue	Case Human Face; Summary;	First State Involved Second State Involved	Case <i>In re Application of Vaneria, 275</i>	Case Summary: Emma Vaneria was 19 years old and had autism and mental retardation. She had resided in Massachusetts with or near her mother since her parents had separated. Vaneria's father, who lived in New York, was	Case Summary: Since Article 4 of the Act (recognition and enforcement) does not include orders from a foreign country, the court would be left with principles of comity and its exceptions including the need for procedural due process protections. The court could cite Act as providing a jurisdictional model.		

UAGGPJA Issue	Case	Case Summary: Human Face	UAGPJA Resolution
First State Involved	Second State Involved		
		<p>A.D.2d 221 (2000)</p> <p>appointed as her guardian in New York. Her mother appealed that decision. The New York appellate court overturned the guardianship order. The court stated that New York had no jurisdiction over Vaneria because she did not live in the state, was not present in the state, and owned no property in the state.</p> <p>Human Face: Emma Vaneria was a young woman caught in conflict between her parents, who lived in different states, and speedy resolution was in her best interest.</p>	<p>home state would facilitate quick resolution.</p> <p>Under the Act, Maryland would be the home state. Florida could have declined jurisdiction as there was an existing guardianship in Maryland and Maryland was a more appropriate forum. This could have avoided the litigation.</p>

UAGCPJA Issue	Case UAGCPJA Human Face; Summary;	Second State Involved Case	Case Summary: Mother and father of Bryan Pulley lived in Missouri. They divorced and the mother moved to Michigan. Bryan sustained brain injury at age 17. Mother took Bryan to Michigan for rehabilitation, and Michigan court appointed her guardian. Bryan returned to Missouri with father six years later. After three years, Father wanted guardianship of Bryan, and filed petition in Missouri court to register and modify the Michigan guardianship order. He requested a transfer of the guardianship to Missouri. Following a hearing with participation of Mother, Michigan court transferred guardianship to Missouri. Missouri judge held hearing and removed mother, appointing father. Mother appealed. Appellate court affirmed, giving full faith and credit to Michigan guardianship, and finding appointment of father to be in Bryan's best interest.
UAGCPJA Resolution			Under the Act, the transfer provisions are initiated by the guardian. Here they were initiated by an interested party. The Act sets out procedure for fair and expeditious transfer with participation by interested parties. The Act would facilitate communication and cooperation between

UAGCPJA Issue	Case Involved	First State Involved	Second State Involved	Case Summary; Human Face	UAGCPJA Resolution
				activities in Missouri. It was in his interest to resolve the jurisdictional questions as soon as possible.	courts.
Jurisdiction	<i>In Re Guardianship of Ralph DeCaigny</i> (Minn. Ct. App. 1994)	MN	NM	Case Summary: Incapacitated person Ralph DeCaigny originally lived in Minnesota, and a Minnesota bank was appointed as guardian of estate by Minnesota court. DeCaigny's sister and her husband moved him to New Mexico where he remained 12 years. New Mexico court appointed them as guardians. Sister died but her husband, Brown, continued to serve, with DeCaigny's brother as substitute guardian. Minnesota bank petitioned Minnesota court for removal of Brown as guardian of person on basis of mismanagement of health care costs and failure to report, as well as inability to care for DeCaigny. Minnesota court removed Brown. Minnesota judge contacted New Mexico judge, who agreed to removal. Guardian Brown appealed. Appellate court stated that a Minnesota court lacked jurisdiction to remove a New Mexico guardian, and reversed and remanded. Appellate court encouraged the two lower courts to work on a plan whereby the incapacitated person and guardian of person and of estate would all be in same state.	Under the Act, the home state would be New Mexico, with jurisdiction for appointment and removal of guardian of person. The Act would facilitate judicial communication and hasten resolution.
Jurisdiction	<i>Guardianship of Bessie Santrucek</i> , 2007 WL	MN	OH	Human Face: Ralph DeCaigny was a 77-year-old individual with Alzheimer's disease for 14 years. His best interests were at stake, and the "split jurisdiction" between the guardian of the person and guardian of the estate in two different states made this difficult.	Under the Act, Minnesota would be the home state, with Ohio as a possible

UAGPJA Issue	Case Number (Ohio Ct. App.. 2007)	First State Involved Second State Involved	Case Summary: Human Face, Minnesota. Third party appealed and court rejected appeal due to lack of standing. Human Face: Bessie was 96 years old. Daughter traveled periodically from Ohio to visit her mother. Since Bessie lived near border, she could have significant connections in both states.	UAGPJA Resolution Human Face
Jurisdiction <i>In the Matter of the Conservator- ship of Opal Williams Murphy, 910 So.2d 1234 (Miss. Ct. App. 2005)</i>	MS	FL; AL	<p>Case Summary: After raising five children in Mississippi, Opal married Mr. Murphrey. They lived in Florida for many years. When Murphrey had a heart attack, Opal's family moved her back to Mississippi, but after four months, she lived in assisted living in Alabama for over two years. Opal's son filed for and was appointed as conservator in Mississippi. When Murphrey's health improved, he filed a motion to intervene in the conservatorship, alleging the court had no jurisdiction as Opal was not a resident of Mississippi. Opal returned to Florida to live with Murphrey. Mississippi court removed son as conservator, finding Opal a resident of Florida. Son appealed. Court of appeals confirmed that Mississippi courts did not have jurisdiction.</p> <p>Human Face: Opal was an older woman with dementia, facing considerable stress due to her husband's heart attack, temporary separation from her husband, and her moves from Florida to Mississippi to Alabama and back to Florida. A large amount of time, money and angst was spent over her son's conservatorship filing in Mississippi and the determination of the question of jurisdiction, which could have been avoided through the procedures of the Uniform Act.</p>	<p>The respondent had been in Alabama for two years, but had significant connections in Florida and Mississippi. Under the Act, the courts could communicate to establish the most appropriate forum, avoiding lengthy litigation.</p>
Recognition	<i>In re Estate of</i>	MT	FL	Case Summary: Sally O'Keeffe was incapacitated and a life-long resident of

UAGGPFJA Issue	Case Summary: Human Face		UAGPJA Resolution
First State Involved	Second State Involved		
<p>Case</p> <p><i>O'Keefe, 833 So.2d 162 (2002)</i></p>	<p>Montana. In the course of probating her father's estate in Florida, the following were appointed: a guardian ad litem in Florida, a conservator in Montana by a Montana court, and a guardian ad litem in Montana. The conservator (Sally's brother) and other family members proposed a family settlement agreement in which Sally would assign her interests in her father's estate in exchange for establishment and funding by other family members of a special needs trust. The Florida guardian ad litem opposed the proposal, while the Montana guardian ad litem supported it. The Montana court approved the proposal. The Florida guardian ad litem challenged the proposal in Florida, claiming that the Montana court had no subject matter jurisdiction over Sally's interest in her father's Florida estate. The Florida trial court ruled that the Montana order was not entitled to full faith and credit. The Florida appellate court overturned the trial court's decision, ruling that the Montana court clearly had personal jurisdiction over its incapacitated residents and subject matter jurisdiction over its resident's interest in an estate distribution governed by Florida law. (While father's property was in Florida, she had only an interest in intestate estate upon disposition, no current jurisdiction over any Florida property.)</p> <p>Human Face: This was a very complex case involving three states, a forged will, and allegations that Sally O'Keefe's father had financially exploited his own mother. Jurisdiction was only one of several intertwined issues.</p>	<p>Jurisdiction</p>	<p><i>In the Matter of Marguerite Seyse 803 A.. 2d 694 (N.J.)</i></p>
			<p>CT</p> <p>Case Summary: Seyse's two daughters (Oehler and Olson) each petitioned in New Jersey to have their mother declared incapacitated and to be appointed as the mother's guardian. The New Jersey court declared the mother incapacitated and appointed the two daughters and Oehler's husband as co-</p>
			<p>Under the Act, New Jersey would be the home state, and Olson could not gain</p>

UAGPJA Issue	Case Summary, Human Face	UAGPJA Resolution
First State Involved	Second State Involved	
	<p>Case Super.Ct. App. Div. (2002)</p> <p>guardians of the mother's person and property. The court also named a lawyer to act as an arbitrator of disputes among the co-guardians.</p> <p>Subsequently, Olson moved Seyse to Olson's home in Connecticut without obtaining consent from the court or the co-guardians. Each daughter then petitioned the New Jersey court to have the other daughter removed as co-guardian, and Olson filed a conservatorship (guardianship) proceeding in Connecticut. The New Jersey judge dissolved the co-guardianship and appointed Olson as guardian of Seyse's person and Oehler as guardian of Seyse's property. His rationale, which overcame concerns about Olson moving Seyse out of state without permission, was that Olson was caring for Seyse in her own home whereas Oehler would have placed Seyse in a facility, and that Seyse had expressed desire to remain with Olson in Connecticut.</p> <p>Seyse died while residing in Olson's home. A probate contest ensued, which raised the issue of whether a guardian can change the domicile of an incapacitated person. Appellate court concluded that a guardian may change the domicile, and concluded that the trial court judge had determined that domicile in Connecticut was in Seyse's best interest.</p> <p>Human Face: Marguerite Seyse was in assisted living in New Jersey, became disruptive at age 88, and was placed in a psychiatric hospital. Daughter Olson brought her mother to her home in Connecticut. <i>Guardian ad litem</i> interviewed Seyse and found she wanted to remain in Connecticut. The court's lengthy determination of domicile was in connection with dispute about probate jurisdiction, not guardianship jurisdiction.</p>	

UAGCPJA Issue	Case Jurisdiction	First State Involved Second State Involved	Case Summary: Human Face	UAGCPJA Resolution
<p>Case</p> <p><i>Matter of Glasser,</i> 2006 WL 510096 N.J. Super. Ct. Ch. Div. (2006), unpublished opinion not reported in A.2d</p>	NJ	TX	<p>Case Summary: Lillian Glasser was long-time New Jersey resident. She visited her daughter in Texas, and the daughter filed for and was awarded temporary guardianship. Son and nephew objected, stating that the matter should be heard in New Jersey. Issue was whether New Jersey court should defer to Texas court. New Jersey court held Lillian Glasser had more contacts in New Jersey, that there was no evidence that she intended change domicile, and that state public policy favors that capacity of domiciliaries be determined in New Jersey courts. Court then held lengthy hearing in New Jersey on capacity, selection of guardian & other issues.</p>	<p>Human Face: This was a highly contested battle between siblings to control their mother and her \$25 million fortune. The case involved dozens of lawyers and resulted in legal fees in Texas alone in excess of \$1.5 million. The 86-year-old widow Lillian Glasser was kept in Texas, away from her home in New Jersey. According to the guardian ad litem, she “repeatedly expressed her desire to return to her home in New Jersey.” The guardian ad litem suggested that her “inability to live in her own home is a continuing source of distress for her that may actually be aggravating her physical and mental condition.”</p>
<p>In Re Guardianship of Morrison, 972 So.2nd 905 (Fl. Dist. Ct. App. 2007)</p>	NJ	FL	<p>Case Summary: Mr. Morrison lived in New Jersey with his longtime companion and girlfriend. After a head injury, he received in-home care in New Jersey until his adult children took him to Florida without companion’s consent or knowledge. Companion filed a petition in New Jersey court, which issued an order to show cause and held proceedings at which the children were represented. Daughter filed competing petition in Florida, and Florida court issued letters of emergency guardianship. Companion filed motion in</p>	<p>Under the Act, the home state would be New Jersey, and Florida could have declined jurisdiction because New Jersey was a more</p>

UAGCJPJA Resolution	Case Summary; Human Face;	appropriate forum. The Act would have resolved the jurisdictional question, avoiding the lengthy litigation.
UAGCJPJA Issue	Florida court requesting court to set aside letters of guardianship or hold in abeyance pending New Jersey action. Florida court denied the motion and entered order of incapacity. New Jersey court held a hearing on standing and jurisdiction, and issued an order holding that New Jersey had jurisdiction because Morrison was a domiciliary. Companion filed a motion in Florida asking court to revoke appointment or stay proceedings based on principle of priority. Florida court denied the motion and she appealed. Appellate court in Florida reversed and remanded, holding that New Jersey was first to exercise jurisdiction, in issuing the show cause order, and that as matter of comity, the Florida lower court abused its discretion in failing to stay the proceedings.	
Case Involved First State	Human Face: Mr. Morrison was 71 years old and incapacitated due to head injury. He was removed from his longtime home. His companion filed five motions over five months, and all parties participated in hearings in both states, at great expense.	
Jurisdiction	<i>In the Matter of Floretta Sutton-Logan</i> (2009 WL 2707357, N.J. Super. A.D.)	The couple resided in Virginia for three years and thus it would be the home state under the Act. However, there was no filing in Virginia. New Jersey clearly was a significant connection state, and could thus have had

UAGGPPJA	Issue	Case	First State Involved
UAGGPPJA	Case	Second State Involved	Human Face Summary; Case
UAGGPPJA Resolution			
		<p>Human Face: Floretta, an elderly woman with serious health problems, had a close relationship with both her daughter and husband, but differences arose between them. These differences were exacerbated by the lengthy guardianship proceeding, including the jurisdictional issue.</p>	<p>Human Face: Floretta, an elderly woman with serious health problems, had a close relationship with both her daughter and husband, but differences arose between them. These differences were exacerbated by the lengthy guardianship proceeding, including the jurisdictional issue.</p> <p>Case Summary: Maydelle Trambarulo was a resident of New Jersey for close to 50 years, and then lived in Delaware one year. She went to Connecticut for medical treatment, where husband's niece filed for conservatorship, and a permanent conservator was appointed. Connecticut probate court declined to allow her to return to New Jersey. Connecticut appellate court found Trambarulo had no intent to establish domicile in Connecticut and reversed, ordering that arrangements be made to transfer the guardianship to an appropriate individual or entity in New Jersey; and ordering that she be permitted to leave Connecticut.</p> <p>Human Face: Maydelle Trambarulo, age 77, was in deteriorating health, with Parkinson's disease. She traveled to Connecticut in 2004 with intent to receive treatment only, and packed for a short stay. Her husband and two of her children were in New Jersey; and her son in Delaware. She was not</p>
Jurisdiction <i>Trambarulo v. Whitaker,</i> 2007 WL 3038792 (Conn. Super. (not reported in A. 2d)	CT NJ; DE		Under the Act, New Jersey would be a significant connection state. The Connecticut court could have declined jurisdiction because New Jersey is a more appropriate forum and because of the unjustifiable conduct of the niece. Thus, the incapacitated person would not

UAGCPJA Issue	Case Involved First State Involved Second State Involved	Case Summary; Human Face;	UAGCPJA Resolution
		<p>allowed to leave the state until the appellate court order in 2007, when she was under hospice care. During that time, the probate court denied the family's various requests for relief.</p>	<p>Case Summary: Loye lived in Oklahoma for most of her life but resided near her daughter in assisted living in Texas for several months, while awaiting an opening in assisted living in Oklahoma. The feuding daughter in Texas and son in Oklahoma filed numerous motions that resulted in four reported cases.</p> <ul style="list-style-type: none"> • Daughter filed for guardianship in Texas, and son in Oklahoma opposed, arguing that her permanent domicile was in Oklahoma. • Son moved mother to Oklahoma and petitioned Oklahoma court for guardianship. Oklahoma court appointed son as special guardian and he filed for permanent guardianship. Son applied for appointment in Texas court as well. • Texas court granted daughter temporary guardianship and ordered son to return mother to Texas. Loyce Juanita Parker refused to leave Oklahoma. • Oklahoma court held hearing on permanent guardianship for daughter, limiting scope of hearing to jurisdiction. Mother testified that she considered Oklahoma her home. Oklahoma court granted son a restraining order against daughter's removal of mother from state. Daughter initiated emergency application to Oklahoma Supreme Court. <p>• Meanwhile, Texas court held son in contempt, and issued a Writ of Capias directing sheriff to take son into custody. Texas court appointed daughter permanent guardian.</p>

UAGGPJA Issue	Case UAGGPJA Summary; Case Human Face Resolution UAGPJA
First State Involved Second State Involved	<p><i>Alvin Edward Parker, Jr., Trustee of the Alvin Edward Parker, Sr., and Loyce Juanita Parker Trust v. Linda Sue Jones</i>, 2009 U.S. Dist. LEXIS 102195 (U.S. Dist. Ct., W. Dist. OK 2009)</p> <ul style="list-style-type: none"> • Oklahoma trial court held that it had jurisdiction of the guardianship because mother's domicile was Oklahoma. • Oklahoma Supreme Court assumed jurisdiction and ordered trial court to decide on daughter's motion to dismiss, which trial court denied. • Oklahoma Supreme Court granted daughter's motion for emergency stay, allowing hearing on jurisdiction to proceed in Oklahoma trial court but staying hearing on general guardianship. Physician stated mother did not have capacity to change her domicile to Texas. • At hearing in Oklahoma, counsel for son advised court that daughter came to the Oklahoma assisted living facility during the night, removed mother during the shift change, and drove her to Texas where she has been ever since. • Oklahoma trial court appointed son guardian, and daughter appealed. • Oklahoma Supreme Court said Oklahoma trial court's order appointing son special guardian should have precluded Texas from proceeding with daughter's guardianship application because it was first judgment and should have been given full faith and credit. • Oklahoma Supreme Court said Texas trial court did not have jurisdiction, as mother's property was all in Oklahoma, and she has resided in Oklahoma, as her stay in Texas was temporary. • An attorney for Loyce Juanita Parker on her behalf appealed the Texas trial court's decision appointing daughter as guardian, on basis of lack of jurisdiction as well as insufficiency of finding of incapacity. The Texas appellate court affirmed appointment of daughter, stating that Texas had jurisdiction and that the trial court did not abuse its authority.

UAGGPJA Case Summary: Human Face	UAGPJA Resolution
Case Involved Second State	<ul style="list-style-type: none"> Following this, the son filed in Texas Appeals Court for a writ of prohibition to stop the trial court from vacating the Oklahoma order. The court, stating that it already had affirmed the lower court on the issue of jurisdiction and thus there was no case pending, dismissed the petition. Finally, in the fourth reported decision in the long-running dispute between the siblings, the son filed actions in Oklahoma for breach of trust and recovery of attorney's fees against daughter, and sought order for the return of Loyce Juanita Parker to Oklahoma. Daughter removed the case to federal district court, and filed motion to dismiss. Federal court granted motion, finding there was no breach of the trust; and that it lacked subject matter jurisdiction due to "Rooker-Feldman doctrine" which prevents lower federal courts from exercising jurisdiction over cases brought by state court losers challenging state court judgments before the district court proceedings commenced. <p>Human Face: Loyce was an elderly incapacitated woman caught between two feuding adult children. She temporarily left her lifelong home state of Oklahoma to stay for a short period in Texas; was taken back to Oklahoma; and again taken to Texas. Meanwhile, during the course of two years, competing battles were waged in Texas and Oklahoma courts, and finally federal court, with multiple attorneys and experts and dozens of separate motions to be considered by the courts. Loyce Juanita Parker remains in Texas, despite stating that she wants to "go home" to Oklahoma, and despite the fact that all of her property is in Oklahoma.</p>
Case Involved First State	
UAGGPJA Issue	Jurisdiction In Re Helen PA OH Case Summary: Helen was an elderly Pennsylvania resident who fell in her Under the Act,

UAGCPJA Resolution Case Summary: Human Face	UAGCPJA Resolution Case Summary: Human Face
UAGCPJA Issue Case Guardianship, 2006 WL 3020316 (Ohio Ct. App. 2006)	home and had surgery for subdural hematoma. Son from Ohio had her placed in Ohio nursing home, petitioned for and was appointed guardian by Ohio court. Helen challenged the appointment, and the trial court found a continuing need for guardianship. A year later, Helen petitioned the court to terminate the guardianship and allow her to relocate back to Pennsylvania, arguing lack of in personam jurisdiction. Court denied her motion. Appellate court found she had waived her jurisdictional argument, and found the trial court did not abuse its discretion in denying the motion to relocate.
	<p>Human Face: Helen faced trauma in her fall, surgery, and relocation to a nursing home and to another state. Her home was in Pennsylvania, and there may have been more evidence of her wishes and values in that state.</p>
Transfer	<p>Case Summary: Jean Hetman filed a petition for emergency guardianship of her mother, Ms. Vicari, in Pennsylvania. The Pennsylvania court appointed Hetman and her sister Annamarie Schwade as co-guardians of Vicari's person and estate. Hetman placed Vicari in care facilities in Pennsylvania and New Jersey from 2000 to 2006. In 2006, Schwade removed the mother to Arkansas and filed for appointment as guardian in the Arkansas court. Hetman filed in Pennsylvania to become sole guardian. Schwade countered, asking the Pennsylvania court to appoint her as sole guardian and transfer jurisdiction to Arkansas. In 2007, the Pennsylvania court terminated Hetman's guardianship and made Schwade sole guardian, transferring jurisdiction to Arkansas. The Arkansas court accepted the case. Hetman objected to Schwade's petition for accounting in Arkansas that alleged inappropriate expenditures; and Hetman argued that the Arkansas court</p> <p>Under the Act, provisions are made for transfer of guardianship cases, with procedural safeguards. While the guardianship in this case was "transferred" from Pennsylvania to Arkansas, the transfer did not include an opportunity for</p>

UAGCPJA Issue	Case Involved First State Second State Involved Case	Case Summary: Human Face; Case Involved Second State Involved Case	UAGCPJA Resolution UAGCPJA
		<p>Lacked jurisdiction over matters that took place in the Pennsylvania proceeding; and that the Arkansas court had no authority to order a non-Arkansas guardian to file an accounting. The Arkansas court found that since Hetman had personally appeared by filing pleadings, it had jurisdiction and ordered the accounting and documents. Hetman appealed.</p> <p>The Supreme Court of Arkansas reversed, finding that while the lower court had both subject matter jurisdiction over guardianship and personal jurisdiction over Hetman, under common law principles a foreign guardian could only be held to account in the state in which the guardian was appointed.</p> <p>Human Face: In this case, acrimony and suspicion developed between two sisters over matters concerning guardianship of their mother, particularly the nature of expenditures in the estate. A more timely resolution of this issue would have prevented unnecessary litigation expenses and brought the matter to a more expeditious conclusion.</p>	<p>objection. Under the Act, Schwade could have objected to the accounting in both the Pennsylvania proceeding to transfer the case and the Arkansas proceeding to accept the case, and this would have brought it to the attention of the courts in a timely fashion.</p>
Jurisdiction <i>In re Conservator Ship of William Paul Ackerman, 280 W.W.3d 206 (2009)</i>	TN KY	<p>Case Summary: William Paul Ackerman lived most of his life in Tennessee. He suffered strokes and became a patient of a Tennessee nursing home. Following this, he was married in Kentucky, honeymooned in Florida, and then suffered another stroke before returning to the Tennessee nursing home. Mr. Ackerman's brother, sister and son were appointed co-conservators of his person and property by county probate court in Tennessee. The wife appealed, arguing that the Tennessee court lacked jurisdiction, as he was a resident of and domiciled in Kentucky, where the couple was married. The Court of Appeals found that domicile was necessary for guardianship</p>	<p>Under the Act, Tennessee would be the home state. The court could have avoided inquiry into domicile, and resolved the case more expeditiously.</p>

UAGCPJA Issue	Case First State Involved Second State Involved	Case Summary: The son of Mr. Cardenas filed a petition in the Cameron County TX court to appoint himself as temporary guardian of his father, who lived in Mexico. The son claimed that Mr. Cardenas' assets had been expropriated by his two daughters. The son tried to serve his sisters with notice but they could not be found. A U.S. attorney representing a Mexican attorney -- who in turn represented Mr. Cardenas -- made a special appearance objecting to the trial court's jurisdiction. The attorney asserted that Mr. Cardenas lived in Mexico, and had never been a resident of or domiciled in Texas. The trial court found that Mr. Cardenas was domiciled in Mexico, that his contacts with Texas were attenuated, and that the court lacked jurisdiction. The court of appeals affirmed.
UAGCPJA Resolution		Under the Act, Mexico would be the home state, and the extended consideration concerning domicile and jurisdiction could have been avoided, sparing the alleged incapacitated elderly person anxiety and expense over the lengthy proceedings.
		Human Face: Mr. Ackerman was a long-time professional staff drummer for recording studios in Tennessee. His brief sojourn in Kentucky when he was married does not compare to his lifetime ties in Tennessee, where jurisdiction should be exercised.

UAGCPJA Issue	Case Involved First State Involved Second State Involved	Case Summary: Human Face Case Resolution UAGCPJA	Under the transfer provisions of the Act, a petition to transfer could have been filed in both courts, and after an opportunity to hear any objections, Louisiana as the receiving state could accept the case, and Texas as the sending state could close it. The Louisiana court could make any needed modifications within 90 days.
Transfer	<p><i>In the Guardianship of Billy Wayne Norris, 2010 WL 26314 (Tex. App.-San Antonio)</i></p>	<p>Case Summary: The two adult children of Billy Wayne Norris each filed for guardianship of the father in different states. The son, Norris, was appointed in Texas and the daughter, Allen, in Louisiana. The father lived in Texas but most of the property was in Louisiana. Allen appealed the Texas decision, and then filed a motion asking the Texas court to remove Norris. The Texas probate court gave full faith and credit to the Louisiana order, removed Norris as guardian of the estate, dismissed all pending litigation for lack of jurisdiction, and transferred the guardianship to Louisiana. Although the incapacitated person died, Allen asserted that her appeal was not moot because the Texas order was conditioned on acceptance by the Louisiana court of the transfer. The appellate court found that there was evidence that the Louisiana court was exercising jurisdiction, as it had appointed an administrator of the estate, and thus the appeal was moot.</p> <p>Human Face: Lack of an orderly transfer process caused the parties and the court to unnecessarily prolong the case, and thus the acrimony between the siblings.</p>	<p>Under the Act the home “state” may have been Nigeria, or Virginia, depending on the period in which she was present there.</p> <p>Presence in DC would not afford</p>
Jurisdiction	<p><i>In Re Adline Uwazih, 822 A.2d 1074 (D.C. Ct. App. 2003)</i></p>	<p>DC VA & N I G E R I A</p>	<p>Case Summary: Ms. Uwazih, a citizen of Nigeria who earlier had been admitted to the United States as a result of an immigration lottery, was struck by a car in Virginia (where she was residing at a relative’s home) and hospitalized in DC. Her husband in Nigeria and her relative in Virginia refused to take her from the hospital because they could not provide adequate care for her. Ms. Uwazih petitioned the DC court to appoint a guardian and conservator for her. The hospital moved to dismiss the lawsuit. The DC court dismissed the suit on the ground that Ms. Uwazih neither was domiciled nor owned property in DC. Ms. Uwazih appealed. The appellate court</p>

UAGCPJA Issue	Case Summary; Human Face;	Second State Involved	UAGCPJA Resolution
UAGCPJA Issue	Case Summary; Human Face;	Second State Involved	Under the Act, Wisconsin would be the home state, and the Minnesota court could have declined jurisdiction as Wisconsin is a more appropriate forum. The extended litigation could have been avoided.
Case	concluded that the language of DC's guardianship law only required that Ms. Uwazih be present in DC to be eligible for a guardian; and that there was no basis for appointing a conservator as Ms. Uwazih did not own any property in DC.	<p>Human Face: Respondent was from Nigeria, temporarily living in Virginia, when she was struck by a car and was treated for a brain injury in a DC hospital for six months. She would require ongoing assistance, and her counsel sought a guardian and conservator to make decisions about discharge and placement. Hospital worked with the Nigerian embassy to arrange for her return. Key issue was domicile of Ms. Uwazih and whether her attorney had manufactured diversity to enable her negligence lawsuit in Virginia to be filed in the federal court.</p>	<p>jurisdiction. However, there were no competing petitions outside of DC, and DC may be an appropriate forum if was in the respondent's best interests.</p>
In Re Guardianship and/or Conservator ship of Millicent S. Ficken, Minn. Ct. App. A07- 1848 (2008), unpublished opinion	W1	MN	<p>Case Summary: Millicent Ficken was a resident of Wisconsin. She visited her two adult children in Minnesota, and was hospitalized there and diagnosed with dementia. Son petitioned Minnesota court for emergency guardianship and conservatorship, and the court appointed a professional fiduciary. At the hearing for the permanent order, the parties reached a stipulated agreement to avoid guardianship through the use of a care management contract and trust. Emergency guardianship was to be continued until the plan was in place, and the agreement was to be incorporated into stipulated court order. Minnesota district court approved the agreement, but disputes arose about implementation. The professional fiduciary petitioned for enforcement, and the son sought to void the agreement based on lack of jurisdiction. The court found it had jurisdiction over guardianship and conservatorship proceedings under Minnesota law. Daughter appealed. At</p>

UAGCPCA Issue	Case First State Involved Second State Involved	Case Summary: Human Face; Summary;	UAGCPA Resolution
		<p>Human Face: Millicent Ficken was a 75-year-old resident of Wisconsin who visited her adult children for Thanksgiving, had a medical emergency while there, and became the subject of an extended guardianship and conservatorship proceeding in Minnesota, even though her home, connections (except for her children) and property were in Wisconsin.</p> <p>Case Summary: Daughter, Connecticut resident, filed in Wisconsin to become guardian of mother, Catherine. Son objected, but after extensive hearings, Wisconsin court appointed daughter as guardian of person, and specified Catherine's living arrangements in Wisconsin, Florida and Connecticut. After hospitalization, Catherine went to a Wisconsin nursing home. Without notice to court or anyone else, daughter removed Catherine from Wisconsin nursing home and placed her in assisted living in Connecticut. Daughter filed petition to become guardian ("conservator") in Connecticut, and Connecticut court appointed her as temporary guardian. Wisconsin court conducted hearing on her transfer. Son moved for removal of daughter as guardian in Wisconsin court. Wisconsin court removed daughter as guardian, daughter appealed, and son cross-appealed, arguing that guardian cannot transfer a ward outside state without court approval. Appellate court concluded that Wisconsin law did not authorize daughter to move Catherine out of state. Court cited <i>Jane E.P.</i> and National Probate Court Standards requiring court permission and notice. Removal affirmed.</p>	

UAGCPJA Issue	Case Summary: Human Face;	Case Involved State	Second State Involved	Human Face: Catherine was an elderly incapacitated person in the middle of a hostile relationship between her son and daughter. She was precipitously moved to another state where she said she felt like “a stranger in a strange land.” Yet moving her back presented possibility of further trauma. Numerous motions, court hearings, appointment of a guardian ad litem, independent evaluator, psychologist and counsel over a four-year period consumed vast resources and time.	Case Summary: Shelda had resided in both West Virginia and Ohio all her life, but in West Virginia since 2001; and had property in both states. At daughter Kathy’s request, the Ohio court appointed an attorney as guardian and conservator. Other daughter Carla later filed a petition in West Virginia, and the court appointed her to serve as guardian/conservator. Kathy filed a petition in West Virginia court for modification, not challenging the appointment but requesting a modification to establish a “shared custody” arrangement. West Virginia circuit court denied the modification, and Kathy appealed. Supreme Court of Appeals of West Virginia affirmed the circuit court’s appointment of Carla as guardian; but found that Shelda’s property and assets in Ohio were more likely to be efficiently managed for her benefit by the existing Ohio conservator, and remanded the case for this modification.	Human Face: Shelda was “an elderly woman who is no longer capable of making complicated decisions about her own welfare.” The two daughters had “a stormy relationship” which was played out in the circuit court and court of appeals litigation.
UAGCPJA Resolution						
Jurisdiction; recognition	<i>In Re: Shelda Jean Robinette,</i> 624 S.E.2d 533 (W. Va. 2005)	WV	OH			