

Nine Ways to Reduce Elder Abuse Through Enactment of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

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The Uniform Adult Guardianship and Protective Proceedings Act (UAGPPJA or Act) addresses three problems of guardianship jurisdiction that may occur in multi-state or international guardianship, conservatorship, or protective proceedings (hereafter referred to generically as guardianship cases or proceedings). These problems are:

- determining which state has jurisdiction to appoint a guardian or conservator;
- transferring an existing guardianship from one state or country to another; and
- recognizing and giving full faith and credit to a guardianship order from another state.

Case law and anecdotes collected by the ABA Commission on Law and Aging (summaries online at <http://www.abanet.org/aging/guardianshipjurisdiction/home.html>) offer evidence that these jurisdictional problems can cost the incapacitated person or family members thousands of dollars, often take years to resolve, and may result in physical or emotional harm to the incapacitated person. Additionally, courts may waste precious resources addressing these issues. If widely enacted by states, the UAGPPJA could fix these problems, saving both families and courts money.

However, the UAGPPJA serves another important purpose by providing nine possible ways of reducing elder abuse. Following a brief explanation of the Act, this article discusses the connections between guardianship and elder abuse generally, and then explains the nine ways that the UAGPPJA could help stop or prevent elder abuse.

What Is Elder Abuse?

There is no national consensus on a definition of elder abuse and state definitions vary widely. The term is used generically to include physical and sexual abuse, financial exploitation, psychological or emotional abuse, neglect by others, abandonment, and—sometimes—self-neglect. Elder abuse is committed by family members, friends, fiduciaries (including guardians and conservators), paid and volunteer caregivers, and others in a relationship of trust to the victim. For more information about elder abuse laws, see the ABA Commission on Law and Aging's elder abuse Web page at www.abanet.org/aging/elderabuse.shtml.

Connections Between Guardianship and Elder Abuse

There are strong connections between guardianship and elder abuse. At times, guardianship may be a necessary tool to stop elder abuse. For example, guardianship may be indispensable for removing an incapacitated victim of financial exploitation from the control of the exploiter. Another illustration is when guardianship is needed to obtain medical care for an incapacitated victim of neglect. At other times, however, guardianship may be the cause of elder abuse. A guardian may financially exploit or neglect the incapacitated person for whom the guardian was appointed to act. The failure of courts

Brief Explanation of the UAGPPJA

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws or NCCUSL) approved the Act in 2007 and recommended its enactment by all the states. The ULC provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. The American Bar Association endorsed the UAGPPJA in August 2007. For more information about these solutions, see the text of the UAGPPJA with prefatory note and comments online at http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007_final.htm or the ULC's "Why States Should Adopt the Uniform Adult Guardianship and Protective Proceedings Act" at http://www.nccusl.org/Update/uniformact_why/uniformacts-why-agppja.asp.

Guardianship jurisdiction requires clarity because each state has its own guardianship law and because many people who are the subject of guardianship proceedings have connections to multiple states or countries. As noted above, these facts pose three problems:

- Jurisdiction: An incapacitated person may own property in multiple states and it may be unclear in which state the guardianship proceeding should occur;
- Transfer: An incapacitated person needs to be moved to another state and the second state requires that another full-blown guardianship proceeding be conducted; and
- Recognition: An institution in another state refuses to act on the authority of a guardian appointed by a court in a different state.

Modeled after the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which has been enacted in 48 jurisdictions, the UAGPPJA offers solutions to these three jurisdictional problems. Article 2 of the Act provides a schema for determining an alleged incapacitated person's "home state" or "significant connection state" in which a guardianship proceeding should be heard by a court. Article 3 creates a procedure for transferring an existing guardianship from one state to another. Article 4 establishes a procedure for registering an existing guardianship in another state, thus enabling the guardian to act on the incapacitated person's behalf in the second state. The UAGPPJA solutions will be ineffectual, however, unless most states adopt them.

to monitor guardianships leaves older people vulnerable to elder abuse.

Nine Ways the UAGPPJA Could Reduce Elder Abuse

In situations where guardianship is needed to stop elder abuse, the UAGPPJA could make it easier for the courts to establish, transfer, and recognize guardianships in multi-state cases. Additionally, the Act could also help prevent guardians from committing elder abuse by enabling courts to learn about elder abuse that may have occurred or been alleged in other states and requiring courts to consider that information and the need for monitoring a guardianship when making critical decisions about a guardianship proceeding. Specifically, the UAGPPJA could reduce elder abuse in the following nine ways:

#1. The UAGPPJA Could Reduce Incidents of "Granny Snatching"

Lillian Glasser was an 86-year-old widow and a long-time New Jersey resident. She visited her daughter in Texas, and the daughter immediately filed for and was awarded temporary guardianship. Her son and nephew objected, stating that the matter should be heard in New Jersey. 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. *Matter of Glasser*, 2006 WL 510096 N.J. Super. Ct. (2006).

The *Glasser* case illustrates how "granny snatching," the unauthorized removal or retention of an older person, may be undertaken to pursue guardianship in another state or to avoid a guardianship in the state from which the elder was snatched. Case law and anecdotes are replete with examples of granny snatching because guardianship jurisdiction currently may be determined by the alleged incapacitated person's physical presence in the state.

Enactment of the UAGPPJA would render granny snatching ineffective and unnecessary by removing presence as the determining factor for guardianship jurisdiction. The Act creates a three-tiered schema governing jurisdiction: (1) “home state,” (2) “significant connection state,” and (3) “another state.”

The “home state” is defined as

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; 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 (Section 201(a)(2)).

As explained in the UAGPPJA commentary, “the ability of the home state to appoint a guardian or enter a protective order for an individual continues for up to six months following the individual’s physical location to another state.” A person can only have one “home state” at a time.

If there is no home state or the court in the home state declines to exercise jurisdiction, then jurisdiction is appropriate in a state to which the person who is the subject of the guardianship proceeding (the “respondent”) has a “significant connection.” That term is defined to mean “other than mere physical presence and in which substantial evidence concerning the (subject person) is available” (Section 201(a)(3)). In determining whether a significant connection exists, courts are to consider the location of the respondent’s family and other persons legally entitled to notification of the proceeding, the length of time the respondent was present in the state and the length of any absence, the location of the respondent’s property, and the respondent’s ties to the state (e.g., voting, filing tax returns, driver’s license, and receipt of services). A person can have multiple “significant connection” states. Once one of these significant connection states establishes jurisdiction, it obtains jurisdictional primacy.

“Another state” can have jurisdiction under two circumstances: (1) the respondent does not have a home state or significant connection state, and (2) the respondent’s home state and all significant connection states have refused to exercise jurisdiction because another state is more appropriate. This third priority prevents a respondent from being left in legal limbo but ensures that there is no more appropriate state for the proceeding.

If the UAGPPJA had governed the *Glasser* case, New Jersey would have been the home state, and the Texas court could have declined jurisdiction because of the daughter’s unjustifiable conduct. The Act would have facilitated timely resolution and promoted communication between judges, saving vast amounts of time and expense for the family and the courts in both states.

#2. The UAGPPJA Enables a Court to Decline to Exercise Jurisdiction Because of and to Penalize “Unjustifiable Conduct”

Maydelle Trambarulo, age 77, was in deteriorating health with Parkinson’s disease. She had resided in New Jersey for close to 50 years and then moved to Delaware where she had lived for one year. 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 another child was in Delaware. While she was in Connecticut, her husband’s niece filed for conservatorship, and a permanent conservator was appointed. Connecticut’s probate court thereafter declined to allow her to return to New Jersey. In 2007, when Trambarulo was under hospice care, Connecticut’s appellate court found Trambarulo had no intent to establish domicile in Connecticut and ordered that she be allowed to leave Connecticut and that arrangements be made to transfer the guardianship to an appropriate individual or entity in New Jersey. *Trambarulo v. Whitaker*, 2007 WL 3038792 (2007).

Striking another blow against granny snatching or similar behavior as a means of obtaining or avoiding guardianship jurisdiction, Section 207(a) of the UAGPPJA enables a court to refuse to exercise jurisdiction if that jurisdiction was made possible through “unjustifiable conduct.” The Act does not define “unjustifiable conduct,” but the commentary provides “unauthorized removal of an adult to another state” as a “common example.”

Section 207(b) authorizes a court that obtained jurisdiction as a result of unjustifiable conduct by a party to assess against that party—not the respondent’s estate—“necessary and reasonable expenses, including attorney’s fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses.”

The UAGPPJA would have led to a different outcome in this case. New Jersey would have been a significant connection state. The Connecticut court could have declined jurisdiction because New Jersey was a more appropriate forum and because of the unjustifiable conduct of the niece. Thus, Trambarulo would not have been trapped in Connecticut for an extended period, separated from her family.

#3. The UAGPPJA Requires a Court to Consider Elder Abuse When Determining the Appropriate Forum

Section 206 of the UAGPPJA lists factors that a court must consider in determining whether it is an appropriate forum to hear a guardianship or protective proceeding. One of those factors is “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.”

#4. The UAGPPJA Facilitates Monitoring of Guardianships

Section 206 also requires a court to consider its own role in detecting and preventing elder abuse. In assessing whether it is an appropriate forum, the

court must appraise “if an appointment were made, the court’s ability to monitor the conduct of the guardian or conservator.” Monitoring is critical to help detect and stop elder abuse.

#5. The UAGPPJA Could Heighten a Non-Home State Court’s Awareness of Abuse

Section 208 of the UAGPPJA provides that if a petition for a guardianship or protective proceeding is brought in a state that was not the respondent’s home state on the date of the petition, then 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” in the manner required by the state hearing the petition. This requirement helps ensure that the court obtains and considers evidence of granny snatching, other unjustifiable conduct, or elder abuse from persons in the respondent’s home state.

#6. The UAGPPJA Facilitates Cross-border Court Communications

Section 104 of the UAGPPJA allows courts in different states to communicate with each other regarding a guardianship or protective proceeding. Through such communications, courts can learn from courts in other states about allegations or evidence of abusive conduct by potential guardians or other persons interested in the outcome of the guardianship proceeding.

#7. The UAGPPJA Enhances a Court’s Ability to Learn About Relevant Criminal Activity in Another State

Section 105 governs cooperation between courts in different states. That section authorizes a court hearing the guardianship proceeding to ask a court in another state to “order any appropriate investigation of a person involved in a proceeding” and to “issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state.” As a result, a court may be able to obtain relevant information about an interested party’s back-

ground, including criminal history, before making critical decisions about the guardianship.

#8. The UAGPPJA Establishes Transfer Procedures That Could Remove Individuals From Abusive Situations

Section 301 creates procedures for a guardian to transfer a guardianship or conservatorship from one state to another. This section requires that the guardian or conservator seeking transfer must notify “the persons that would be entitled to notice of a provision ... for the appointment of a guardian or conservator.” Section 301 also requires the court hearing the petition to consider whether “plans for care and services for the incapacitated person in the other state are reasonable and sufficient” and whether “adequate arrangements will be made for management of the protected person’s property.” These transfer procedures expedite the removal of an incapacitated person from a state in which he or she is experiencing abuse, neglect, or exploitation. They also prevent legal limbo situations in which an incapacitated person is vulnerable to abuse because of difficulties transferring the guardianship or conservatorship from one state to another.

#9. The UAGPPJA Establishes Registration Procedures That Aid in Notification and Monitoring of Abuse

Ninety-year-old Margaret Enos lived in Florida, where a private non-profit agency was appointed her guardian. Without authority or notice, her daughter took her to Massachusetts, where Enos had no other family or friends, and placed her in a nursing home. Her daughter claimed that the agency had neglected Enos. The agency, with Florida court order, sought return of Enos to Florida. The daughter filed for guardianship in Massachusetts. The Massachusetts court ordered surrender of Enos to the agency for return to Florida and dismissed the daughter’s petition. The daughter appealed, contending that Florida guardianship was not entitled to recognition in Massachusetts. The Appellate court affirmed, recognized Florida

guardianship and stated that Florida had jurisdiction. The agency spent Enos’s funds for the Massachusetts litigation. *In Re Guardianship of Margaret Enos*, 670 N.E. 2d 967 (1996).

Sections 401 and 402 of the UAGPPJA establish procedures under which a guardian or conservator may register the guardianship or conservatorship order in another state to seek authority to act on the incapacitated person’s behalf in that state. The Act requires that the guardian or conservator notify the court that appointed him or her of the intent to register in another state. A court receiving such notice would, under Sections 104 and 105, have the opportunity to question the rationale for the registration and to communicate and coordinate with the court in the other state. These procedures enable an appointing court that is concerned about elder abuse by the guardian or conservator to share that information with the other court and possibly prevent an abusive situation in the other state.

If the UAGPPJA had been in effect at the time of the *Enos* case, the Florida agency could have registered and sought recognition of its authority in Massachusetts. The agency would have had to notify the Florida court of its intent to register the guardianship in the other state, which could have triggered the Florida court to investigate the allegations of neglect by the agency and the daughter’s unauthorized removal of her mother to Massachusetts.

Conclusion

The UAGPPJA was drafted to fix the three jurisdictional challenges—jurisdiction, recognition, and transfer—that are often faced by individuals and courts in multi-state guardianship cases. Fixing these problems through widespread state enactment of the Act is critical because those challenges can be financially and emotionally costly to the persons involved in multi-state litigation, as well as expensive to the courts hearing the cases. Moreover, several of the UAGPPJA provisions could help courts take action to detect situations where elder abuse is occurring or

may be likely to occur—and then prevent or stop the problem. Courts could communicate and coordinate with courts in other states to learn about relevant evidence, abuse, or criminal behavior by parties involved in the case; ensure that interested persons in other states have the opportunity to provide relevant information about abuse or contest the proceeding; decline to exercise jurisdiction over a case because the respondent is in the state due to granny snatching or other unjustifiable conduct; consider evidence of elder abuse and the court’s ability to monitor a guardianship when determining whether it should

exercise jurisdiction; and transfer guardianship to another state in an orderly and timely fashion to protect an older person from an abusive situation or ensure protection is provided.

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