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## INTRODUCTION

### THE UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT OF 1997— TEN YEARS OF DEVELOPMENTS

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In 1997, the National Conference of Commissioners on Uniform State Laws (NCCUSL)<sup>1</sup> adopted the revised Uniform Guardianship and Protective Proceedings Act (UGPPA).<sup>2</sup> The 1997 version contains significant revisions to the UGPPA,<sup>3</sup> especially to Articles 1 and 3.<sup>4</sup> After a two-year process of debate,

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1. Natl. Conf. Commrs. on Unif. St. Ls., *Uniform Law Commission: The National Conference of Commissioners on Uniform State Laws*, <http://www.nccusl.org/Update/> (accessed Jan. 15, 2008).

The National Conference of Commissioners on Uniform State Laws (NCCUSL) provides states with non-partisan, well-conceived[,] and well-drafted legislation that brings clarity and stability to critical areas of the law. [Its] work supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state.

*Id.*

2. Unif. Guardianship & Protective Procs. Act (1997).

3. The 1997 Act replaced the 1982 version of the Uniform Guardianship and Protective Proceedings Act (UGPPA). *Id.* at i.

4. See *id.* at ii–iv for a summary of the changes.

drafting, and revisions, the Commissioners adopted the final version of the Act.<sup>5</sup>

It is now ten years after the adoption of the UGPPA<sup>6</sup> and issues in guardianship law have evolved since its adoption. In the past ten years, more emphasis is being placed on court monitoring,<sup>7</sup> mediation has been used to resolve some disputes in guardianships, significant issues regarding interstate and cross-border guardianships have developed, a new Uniform Power of Attorney Act<sup>8</sup> has been adopted, a uniform act for resolving guardianship-

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5. This timeline is typical for Uniform Acts. As NCCUSL's procedures indicate:

[e]ach uniform act is years in the making. The process starts with the Scope and Program Committee, which initiates the agenda of the Conference. It investigates each proposed act and then reports to the Executive Committee whether a subject is one in which it is desirable and feasible to draft a uniform law. If the Executive Committee approves a recommendation, a drafting committee of commissioners is appointed. Drafting committees meet throughout the year. Tentative drafts are not submitted to the entire Conference until they have received extensive committee consideration.

Draft acts are . . . submitted for initial debate of the entire Conference at an annual meeting. Each act must be considered section by section, at no less than two annual meetings by all commissioners sitting as a Committee of the Whole . . . .

Once the Committee of the Whole approves an act, its final test is a vote by states—one vote per state. A majority of the states present, and no less than [twenty] states, must approve an act before it can be officially adopted . . . .

At that point, a Uniform . . . Act is officially promulgated for consideration by the states. Legislatures are urged to adopt Uniform Acts . . . as written, to "promote uniformity in the law among the states."

Natl. Conf. Commrs. on Unif. St. Ls., *supra* n. 1, at <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=11>.

The revisions to the Uniform Guardianship and Protective Proceedings Act were precipitated by a two year study by the A.B.A. Senior Lawyers Division Task Force on Guardianship Reform . . . [with] representatives . . . of . . . [various] A.B.A. entities, including the Real Property Probate and Trust Law Section and the Commission[ ] . . . on [Law and Aging] . . . and . . . a variety of other [interested] groups . . . . The Task Force . . . report . . . served as the starting point for the redrafting of the Uniform Guardianship and Protective Proceedings Act.

*Id.* The drafting committee began its work in 1995. Unif. Guardianship & Protective Procs. Act at i. After the Act was approved in 1997, "technical amendments [were] offered at the 1998 Annual Meeting," and the UGPPA was submitted to the ABA House of Delegates for approval at the 1998 ABA annual meeting. *Id.*

6. To date, Alabama, Colorado, Hawaii, Minnesota, and Montana have adopted the UGPPA. Natl. Conf. Commrs. on Unif. St. Ls., *A Few Facts about the Uniform Guardianship and Protective Proceedings Act (1997)*, [http://www.nccusl.org/Update/uniformact\\_factsheets/uniformacts-fs-ugppa97.asp](http://www.nccusl.org/Update/uniformact_factsheets/uniformacts-fs-ugppa97.asp) (accessed Jan. 15, 2008).

7. See e.g. Naomi Karp & Erica Wood, *Guarding the Guardians: Promising Practices for Court Monitoring*, AARP Pub. Policy Inst. (Dec. 2007) (available at [http://www.aarp.org/research/legal/guardianships/2007\\_21\\_guardians.html](http://www.aarp.org/research/legal/guardianships/2007_21_guardians.html)).

8. Unif. Power of Atty. Act (2006) (available at <http://www.law.upenn.edu/bl/>)

jurisdiction questions was adopted,<sup>9</sup> and the Uniform Trust Code<sup>10</sup> was adopted.<sup>11</sup>

There have been hotly contested guardianship cases in the past ten years—some high-profile, some not. There have also been developments, ethically and professionally, with the passage of significant revisions to the ABA Model Rules of Professional Conduct<sup>12</sup> (according to the ABA Ethics 2000 Commission<sup>13</sup>), the fourth edition of the American College of Trusts and Estates Counsel (ACTEC) *Commentaries on the Model Rules of Professional Conduct*,<sup>14</sup> and the adoption of the National Academy of Elder Law Attorneys (NAELA) *Aspirational Standards for the Practice of Elder Law*.<sup>15</sup>

The purpose of this *Stetson Law Review* issue is to examine the issues raised in guardianship law ten years after the passage of the UGPPA. The articles in this issue explore the developments of the law and problems relating to guardianships as well as some of the solutions to these problems. This issue contains articles by Professor Linda Whitton, the reporter for the Uniform Power of Attorney Act; Professor Larry Frolik; Sally Balch Hurme; Naomi Karp and Erica Wood; Pamela Teaster, Erica Wood, Susan Lawrence, and Winsor Schmidt; and Frank Johns, all recognized authorities in guardianship.

First, Professor Linda Whitton, in *Durable Powers as an Alternative to Guardianship: Lessons We Have Learned*,<sup>16</sup> examines the lessons learned from using durable powers and suggests prac-

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archives/ulc/dpoaa/2006final.pdf).

9. Unif. Adult Guardianship & Protective Procs. Jxn. Act (available at [http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007\\_final.pdf](http://www.law.upenn.edu/bll/archives/ulc/ugijaea/2007_final.pdf)). The Act was adopted by the Uniform Law Commissioners during their annual meeting in 2007.

10. Unif. Trust Code (2005) (available at <http://www.law.upenn.edu/bll/archives/ulc/uta/2005final.pdf>).

11. The Uniform Trust Code was adopted in 2000 and in 2004 and 2005. *Id.* at 8.

12. Model R. Prof. Conduct (ABA 2007).

13. ABA, *Center for Professional Responsibility, Ethics 2000 Commission*, <http://www.abanet.org/cpr/e2k/home.html> (accessed Jan. 15, 2008).

14. Am. College of Trust & Est. Counsel Found., *Commentaries on the Model Rules of Professional Conduct* (4th ed., ACTEC Found. 2006) (available at [http://www.actec.org/Documents/misc/ACTEC\\_Commentaries\\_4th\\_02\\_14\\_06.pdf](http://www.actec.org/Documents/misc/ACTEC_Commentaries_4th_02_14_06.pdf)).

15. Natl. Acad. Elder L. Attys., *Aspirational Standards for the Practice of Elder Law with Commentaries*, 1 Natl. Acad. Elder L. Attys. J. 1 (2005) (available at <http://www.naela.org/pdf/AspirationalStandards.pdf>).

16. Linda S. Whitton, *Durable Powers as an Alternative to Guardianship: Lessons We Have Learned*, 37 *Stetson L. Rev.* 7 (2007).

tice strategies and legislative reform to address the problems associated with those lessons. Her article highlights some of the significant provisions of the new Uniform Power of Attorney Act.

Next, Professor Larry Frolik, in *Is a Guardian the Alter Ego of the Ward?*,<sup>17</sup> explores the question of the guardian's relationship to the ward. He succinctly describes the dilemma faced by guardians as follows: "[G]uardians are merely average persons who sometimes find themselves required to make extraordinary decisions." Professor Frolik concludes his article with an examination of the movement toward a proxy decisionmaking standard and a change in the guardian's role from court's agent to representing the ward's best interest.

Writing about interstate concerns, Sally Hurme examines the problems and solutions involved in mobile guardianship situations in *Crossing State Lines: Issues and Solutions in Interstate Guardianships*.<sup>18</sup> She discusses the problems a person with declining capacity faces when he or she either resides in multiple states or needs to relocate to another jurisdiction. This article approaches these problems in the following three parts: initial jurisdiction, recognition, and transfer. Additionally, Ms. Hurme reviews the solutions provided by the recently adopted Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act<sup>19</sup> (UAGPPJA) as well as how state courts resolved jurisdictional disputes in some high-profile cases.

Naomi Karp of the AARP Public Policy Institute and Erica Wood of the American Bar Association Commission on Law and Aging present findings from a 2005 survey in their article, *Guardianship Monitoring: A National Survey of Court Practices*.<sup>20</sup> After reviewing the history of guardianship monitoring and reform efforts, the authors examine the methodology used for the survey and their findings. They discuss the policy and practical reasons for court monitoring and conclude their article by summarizing the key points of the survey findings.

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17. Lawrence A. Frolik, *Is a Guardian the Alter Ego of the Ward?* 37 Stetson L. Rev. 53 (2007).

18. Sally Balch Hurme, *Crossing State Lines: Issues and Solutions in Interstate Guardianships*, 37 Stetson L. Rev. 87 (2007).

19. Unif. Adult Guardianship & Protective Procs. Jxn. Act.

20. Naomi Karp & Erica F. Wood, *Guardianship Monitoring: A National Survey of Court Practices*, 37 Stetson L. Rev. 143 (2007).

In *Wards of the State: A National Study of Public Guardianship*,<sup>21</sup> authors Pamela Teaster, Erica Wood, Susan Lawrence, and Winsor Schmidt review some significant events in guardianship. In 2005, Teaster and her colleagues conducted a nation-wide public guardianship study, which extensively examined public guardianship law and practice and compared it with the law and practice existing at the time of a similar study twenty-five years earlier. In their article, they discuss the legal analysis and key findings from in-depth interviews conducted in selected states and update their findings with statutory information from 2007. The authors conclude their article by making a series of recommendations for change in state public guardianship systems.

The final article in this issue is written by A. Frank Johns. In *Guardianship Adjudications Examined within the Context of the ABA Model Rules of Professional Conduct*,<sup>22</sup> he reviews the guardianship adjudicative process and the various related client-attorney relationships. His analysis is presented within the context of the ABA Model Rules of Professional Conduct, the NAELA Aspirational Standards, and the ACTEC Commentaries. Mr. Johns uses case studies to illustrate the various ethical issues that an elder law attorney may face and applies the Model Rules to these case studies for an in depth analysis.

The articles in this issue will add to the development of guardianship law and serve as a platform for future discussion and reform efforts as advocates work to improve guardianship laws and procedures throughout the states and across borders.

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21. Pamela B. Teaster, Erica F. Wood, Susan A. Lawrence & Winsor C. Schmidt, *Wards of the State: A National Study of Public Guardianship*, 37 Stetson L. Rev. 193 (2007).

22. A. Frank Johns, *Guardianship Adjudications Examined within the Context of the ABA Model Rules of Professional Conduct*, 37 Stetson L. Rev. 243 (2007).