

To the General Assembly's Judiciary Committee:

My name is Joseph A. Egan, Jr. I am currently the Probate Judge for the District of Ridgefield but I am writing this in my capacity as a former President and Executive Committee Member of the National College of Probate Judges (NCPJ). The National College of Probate Judges is the only judicial organization in the country dedicated solely to probate law. A few years ago, when I served on the Board, NCPJ adopted a resolution in support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act that is now before you as S.B. No. 426.

Simply stated NCPJ feels this bill will go a long way in resolving multi-state jurisdictional battles with a resulting savings in dollars and time. It is the feeling of NCPJ that the present lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

I am attaching an article written by Judge Mike Wood of Houston, Texas that appeared in The Journal, Vol. 5 No. 2, published by the National College of Probate Judges. Judge Wood states NCPJ's position clearly and concisely. Speaking on behalf of NCPJ we strongly support this bill.

Judge Joseph A. Egan, Jr.
March 9, 2010



A Call to Action

by Hon. Mike Wood

An aging and increasingly mobile population has caused increased problems for the probate courts across the nation. As modern medicine has cured or found treatments for many diseases, Americans are living much longer. Alzheimer's-related dementia, virtually unknown before 1960, is affecting an increasing number of elderly people. Many elderly citizens are not able to make decisions about their finances and medical care, needful of help to care for themselves. As parents age, and as children grow up and leave home, the parents are dependent on the courts to find guardians for them. Oftentimes, children live in different cities and states, and disagree about which state should be home for mom or dad.

Guardianship or conservatorship is a relationship created under the law of the state in which a court gives to one person or entity (the guardian or conservator) the duty and power to make person and/or property decisions for another (the incapacitated person or ward). In our increasingly mobile society, adult guardianships often involve more than one state, raising complex jurisdictional issues. For example, many older Americans own property in more than one state. Family members who provide support may be scattered around the country. At-risk elderly individuals may need to be moved for medical or financial reasons. Thus, judges, guardians, and lawyers frequently are faced with problems about which state has initial jurisdiction, how to transfer a guardianship to another state, and whether a guardianship created in one state will be recognized in another.

These multi-state jurisdictional battles can take up vast amounts of time for families, courts and attorneys. Court hearings lasting days can use much of the resources of the proposed ward in fees of lawyers and the persons appointed to represent the ward's interest in the hearing. The cumbersome delays can

even interfere with timely medical treatment for the incapacitated individual. Jurisdictional tangles can exacerbate family conflict, aggravating sibling rivalry as each side must hire lawyers in every state in which the battle is proceeding, to litigate which state will hear the case and where the final order of guardianship will be lodged. Moreover, lack of clear jurisdictional guideposts can facilitate "granny snatching" and other abusive actions.

For several years, a Drafting Committee of the National Conference of Commissioners on Uniform State Laws worked on a solution to the problem of jurisdiction in interstate guardianships, culminating in 2007 with the approval of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act ("UAGPPJA"). The UAGPPJA seeks to clarify jurisdiction and provide a procedural roadmap for addressing dilemmas in which more than one state is involved, and to enhance communications between courts in different states.

Because UAGPPJA is jurisdictional in nature, it cannot work as intended – providing uniformity and reducing conflict – unless all or most states adopt it. Thus, there is a compelling need for education and outreach to all stakeholders involved in the care of elders who are unable to care for themselves. At the present time, according to the Uniform Law Commission, only three states have enacted UAGPPJA: Utah, Alaska, and Colorado. The proposed act has been introduced in only three other jurisdictions: District of Columbia, Missouri and Delaware.

In an effort to assist in the process of spreading the word about UAGPPJA, the American Bar Association Commission on Law and Aging has commenced a project, the *Joint Campaign for Uniform Jurisdiction*. The *Campaign* is funded by 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 *Joint Campaign* will meet the

need for increasing education by: (1) developing a Web-based clearinghouse on the UAGPPJA; (2) conducting a national Web cast on the UAGPPJA; and (3) preparing and disseminating educational materials. The emphasis of the ABA Commission's *Joint Campaign* will be on how multi-state guardianship problems can affect the lives of vulnerable incapacitated individuals and their families, and how the UAGPPJA can address those problems.

Those of us, who preside in courts that have guardianship jurisdiction, have presided over fights between well-meaning siblings who cannot agree on where and how mother or dad should be cared for. It is difficult enough to resolve those disputes if everyone is in the same city. Add to the fight the fact that one sibling has removed their parent from the home in which they had lived for years, and has taken them to another state, for the convenience of the child who would be the caregiver. Obviously, several questions are presented, not the least of which is whether the proposed ward had the mental capacity to decide to change their residence. If not, are they sufficiently connected to the new state for that state to have jurisdiction? Two contesting guardianship proceedings in two separate states, with potentially contradictory results, is the very situation that UAGPPJA was designed to avoid. Even without the Act, the two judges could converse, and perhaps avoid the difficulty, but that oftentimes did not work. To avoid the problems from reoccurring, we should all work to get the Uniform Adult Guardianship and Protective Proceedings Act passed in our home states.

What steps should we each take?

1. Familiarize yourself with the UAGPPJA. Copies are available on line from the National Conference of Commissioners on Uniform State Laws. The web address is www.nccusl.org, and the snail-mail is 211 E. Ontario Street, Suite 1300, Chicago, Illinois 60611. The Act can be downloaded in Word,

without comments, or the full text with the committee's comments can be downloaded (which is 36 pages long). The Act itself is not that long or hard to understand.

2. Contact the American Bar Association *Joint Campaign* at www.abanet.org, and get the benefit of the work they are doing.

3. Contact your state bar association, guardianship association, or elder group that has influence in your state legislature. Spend the time with them to get them on board to cause the Act to be introduced in your legislature. The Texas legislature only meets every other year, from January to May, and most State Bar of Texas bills have to go through a committee process by July of the previous year. The process might long and arduous, but the end is worth it.

No one who gives the subject very much thought will oppose the UAGPPJA. "No, I think it is better for the proposed ward and her family to spend \$50,000 to \$100,000 in attorneys' fees fighting in two states over the ward's care." The argument makes itself, but each of us needs to make the effort in our state to get the ball rolling.

