

CROSSING STATE LINES: ISSUES AND SOLUTIONS IN INTERSTATE GUARDIANSHIPS

Sally Balch Hurme*

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* © 2007, Sally Balch Hurme. All rights reserved. J.D., American University Washington College of Law; B.A., Newcomb College of Tulane University. The Author is an Issue Coordinator with the Financial Protection team at AARP focusing on AARP's campaign against investment fraud. She writes and lectures extensively on consumer fraud, elder exploitation, capacity, and surrogate decisionmaking issues.

Prior to coming to AARP fifteen years ago, the Author was an assistant staff director for both ABA Commissions on Legal Problems of the Elderly and on Mental and Physical Disability Law where she conducted major research on guardianship monitoring. The Author has also been in private practice, a legal services attorney, and an attorney advisor with the United States Department of Justice. She teaches Elder Law as an adjunct professor at George Washington University Law School. The Author was a member of the United States State Department delegation that drafted the Hague Convention on Incapacitated Adults. She has lectured on elder abuse in Madrid, Prague, Venice, Moldova, and the United Nations.

The Author is a member of the National Academy of Elder Law Attorneys and the Virginia Bar Association. She serves as a Trustee of the Center for Guardianship Certification and is a member of the Board of Directors of the National Guardianship Association. AARP, 601 E Street N.W., Washington, D.C. 20049, (202) 434-2152, (202) 434-6474 (fax).

I. INTRODUCTION

Elder law attorneys, guardians, conservators, and judges are frequently faced with sorting out complex jurisdictional issues caused by our society's increasing mobility.¹ For example, a person with declining capacity may need the assistance of a guardian, but if she has spent time in more than one jurisdiction, or needs to be moved to another area to receive care, where should the guardianship petition be filed? If two or more probate courts have jurisdiction, which is the more appropriate forum to hear the matter? After a guardian has been appointed, can that guardian place the ward in a nursing home in another jurisdiction? Will the conservator be able to transact the ward's business in another state?² If the court in another state appointed the guardian, will its order be given full faith and credit by another jurisdiction?³ Which court will oversee the guardianship if the ward, guardian, or both move to a different state?⁴ What criteria should the court employ to determine if it has jurisdiction to appoint a guardian for an incapacitated person who is temporarily located in the state or for a resident who is now living in a long-term care facility in another state?⁵

Some answers to these questions may be derived from the basic concepts of in personam and in rem jurisdictional concepts.⁶ Some guidance may also be found in the jurisprudence of full

1. See Wan He et al., *65+ in the United States: 2005*, 138 (U.S. Census Bureau 2005) (available at <http://www.census.gov/prod/2006pubs/p23-209.pdf>) (noting that approximately fourteen percent of the total population changes their residence every year, with four percent of persons aged sixty-five and older moving every year).

2. Many of the questions listed here were posed by two research analysts from the National Center for State Courts. Charlene D. Daniel & Paula L. Hannaford, *Creating the "Portable" Guardianship: Legal and Practical Implications of Probate Court Cooperation in Interstate Guardianship Cases*, 13 *Quinnipiac Prob. L.J.* 351, 353 (1999).

3. *Id.*

4. Sally Hurme, *Mobile Guardianships: Partial Solutions to Interstate Jurisdictional Problems*, 17 *Natl. Acad. Elder L. Attys. Q.* 6, 6 (2004) (available at http://www.abanet.org/rppt/meetings_cle/spring2003/pt/InterstateElder/hurme.pdf).

5. Daniel & Hannaford, *supra* n. 2, at 353. The authors also raise the practical questions of how courts will obtain information about the case if persons with relevant information live out of state, what technology can be employed to reduce costs, whether it is ethical for different courts to communicate with each other in determining appropriate venue, how the court will learn of other pending proceedings, and how to apply remedies if the guardian is not located in the state. *Id.* at 353-354.

6. Hurme, *supra* n. 4, at 1.

faith and credit.⁷ Other answers are found in various state guardianship statutes that specifically address how a foreign guardian's authority to act will be recognized in another jurisdiction.⁸ A model statute⁹ and a handful of state laws tackle the problem of transferring a guardianship to another state or identifying the appropriate venue.¹⁰

Despite this patchwork of clues about to how to resolve the multiple issues surrounding mobile guardians and wards, answers are still difficult to ascertain and many questions have no simple solution. The puzzle becomes even more complicated when the answer is not within the questioner's own state's law but in the law of the other state that is involved.

This Article divides the interstate jurisdiction puzzle into three parts that roughly track the chronology of a guardianship case as the interstate issues arise. Part II addresses the issue of initial jurisdiction when there are pending petitions in more than one jurisdiction. Part III tackles the issue of recognizing a guardian or conservator's authority once appointed to act in another state, while Part IV discusses transfer—permanently moving the supervision of the case from one jurisdiction to another. Part V focuses on the mobility of wards, guardians, family members, and property and how that mobility adds an extra component to the difficulty the courts already have in tracking and monitoring their cases.

Issues rarely neatly divide into an author's categorization, but this grouping follows the chronology of most guardianship cases. At the onset of an interstate guardianship case, the first issue is where to begin. Once the guardian has been appointed, the next issue involves the out-of-state extent of the guardian's authority as the guardian seeks to make decisions and manage property that reach into other states while remaining under the authority of the court that initiated the guardianship. During the

7. *Id.*; see e.g. *In re Guardianship of Richardson*, 28 P.3d 621, 623 (Okla. Civ. App. 2000) (recognizing the dispositive issue in a guardianship proceeding as whether a marital dissolution decree from another state was entitled to full faith and credit).

8. Daniel & Hannaford, *supra* n. 2, at 370–371 (noting that Tennessee, West Virginia, and South Dakota have all enacted legislation addressing interstate guardianships); Hurme, *supra* n. 4, at 1.

9. Natl. College Prob. JJ., *Final Report of the NCPJ Advisory Committee on Interstate Guardianships* app. D (St. J. Inst. 1998).

10. *Supra* n. 7 and accompanying text.

course of some guardianship cases, circumstances may change, making it appropriate to move the guardianship to another jurisdiction for supervision and to cut the ties to the initiating court. At all times after a guardian is appointed, the court needs to be able to locate the guardian and the ward to be able to monitor and enforce its orders.

While the initial stage of where to file and how to sort out battling initial petitions may be the most litigious, caselaw demonstrates that issues in the midst of a guardianship also involve potential forum shopping for a jurisdiction that will resolve a substantive issue to the petitioner's favor. The party whose petition was rejected in the initial proceeding may seek to be heard in another jurisdiction having some tie to the case. In other instances, a court may get involved in a guardianship issue with little consideration of whether it has, or should have, jurisdiction.

A primary source of the confusion regarding what court has or should have jurisdiction is the absence or disarray of statutory guidance on jurisdictional issues. Only a few states have statutory provisions to sort out either the initial, recognition, or transfer jurisdictional questions, and none have all three.¹¹ This Article reviews the status of statutory guidance for these jurisdictional conundrums. Any statutory survey suffers from the limitations of missing relevant statutes, caselaw, or court rules of which local practitioners should be aware. Statutory surveys also ignore how judges apply the laws in all the cases that never are appealed. As discussed herein, the Uniform Guardianship and Protective Proceedings Act¹² (UGPPA) and the National Probate Court Stan-

11. Edward Zetlin, *Interstate Guardianships: Problems and Solutions*, 27 Elder L. Rpt. 1, 1 (Nov. 2005).

12. Unif. Guardianship & Protective Proc. Act, 8A U.L.A. 301 (2003). The UGPPA is the model law adopted by the National Conference of Commissioners on Uniform State Laws to provide uniformity among state laws on the determination of capacity and appointment of guardians or conservators. Approximately twenty states have adopted significant portions of the model law, which derives from the earlier Article Five of the Uniform Probate Code (UPC). The UPC/UGPPA is the source of the vocabulary that distinguishes between "guardian" for personal matters and "conservator" for financial matters. Nonmodel-law states may use "guardian" to designate the fiduciary appointed with authority for either personal or property decisions, to designate the person appointed over a minor, or to differentiate between a voluntary and involuntary appointment. In this Article, "guardian" refers generically to the appointment of a fiduciary with the responsibility to make decisions on behalf of an adult who has been found to be unable to make either personal or financial decisions. "Conservator" is used when the fiduciary has specific financial decisionmaking authority or when the state law or opinion uses that terminology.

dards,¹³ developed by the National College of Probate Judges (NCPJ), attempt to provide some uniformity and consistency between states when jurisdiction is an issue. However, their impact is limited to date. The efforts of the National Conference of Commissioners of Uniform State Laws to address interstate inconsistency are discussed in Part VI. The utility of the proposed model law is examined in Part VII by predicting how contentious interstate cases could have been resolved if the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act had been available to guide litigators and jurists in settling jurisdictional issues expeditiously.

II. INITIAL JURISDICTION

Allison Edgewood files a petition in State F where her mother lives in an apartment half the year. She is concerned that her sister Betty is not taking proper care of Mrs. Edgewood.¹⁴ As soon as Betty learns of Allison's petition, she files another petition in State G where

13. Commn. Natl. Prob. Ct. Standards & Advisory Comm. *Interstate Guardianships, National Probate Court Standards* (Natl. Ctr. St. Cts. 1993). The Commission's objective is to promote uniformity, consistency, and continued improvement in the operation of the nation's probate courts. The Standards and associated commentary, annotations, and reference materials bridge gaps of information, provide organization and direction to the future development of the probate courts, and set forth aspirational goals for the probate courts. Although the Standards include both concrete recommendations and the rationale behind them, they are not intended to be statements of what the law is or should be, or to otherwise infringe on the [decisionmaking] authority of probate court judges or state legislatures. Nor do they address every aspect of the nation's probate courts but rather set forth guiding principals to assist the future evolution of these courts. The Standards seek to capture the philosophy and spirit of an effective probate court.

Id. at xi. Prior to proposing the Standards, the NCPJ surveyed probate judges about the prevalence of interstate issues. While the "[r]espondents estimated that interstate problems [arose] in less than 5% of their caseloads . . . the vast majority . . . claimed that such cases caused 'somewhat' or 'a great deal' of difficulty." Daniel & Hannaford, *supra* n. 2, at 355 (citing Natl. College Prob. *JJ.*, *supra* n. 8, at 3).

14. If Betty were Mrs. Edgewood's agent under a durable power of attorney, another set of questions arises as to the least restrictive alternatives and the relationship between the self-selected agent and the court-appointed guardian. Sally Balch Hurme, *Self-Selected Agents and Court-Appointed Fiduciaries* 21–23, Natl. College Prob. *J. Life & Times* (Fall 2003); see *In re Orshansky*, 804 A.2d 1077, 1097–1098 (D.C. 2002) (noting that the probate court, in appointing a guardian from the District of Columbia, failed to consider either the ward's prior plans to live in New York or her choice of a New York healthcare decision-maker).

*Mrs. Edgewood owns a home. Which state should determine Mrs. Edgewood's capacity and appoint a guardian or conservator?*¹⁵

The variations on this dueling petitions scenario are endless and, unfortunately, all too common. Which court has jurisdiction? If both States F and G have jurisdiction under their respective state statutes, which court should proceed to determine capacity and appoint a guardian or a conservator? State F may have in personam jurisdiction over Mrs. Edgewood, but State G may have in rem jurisdiction over her real property. If both courts proceed, the result most likely will be protracted litigation that will do little to enhance the family dynamics and ensure Mrs. Edgewood's care.

State statutory provisions regarding subject-matter jurisdiction provide little help. If there is any statement at all, its language usually just designates which of the various types of courts (probate, district, superior, surrogates, etc.) have jurisdiction over guardianship matters.¹⁶ The states that have adopted the UGGPA generally grant jurisdiction to the designated court over guardianship for persons domiciled or present in the state and protective proceedings for persons domiciled in or having property located in the state.¹⁷

A. Venue

Once the type of court has been identified, venue provisions typically identify which of those courts in the state can proceed to hear the petition.¹⁸ Depending on the state, venue for a guardianship of the person may be proper where the

15. This hypothetical is adapted from Hurme, *supra* note 4, at 2.

16. Monrad G. Paulsen & Judah Best, *Appointment of a Guardian in the Conflict of Laws*, 45 Iowa L. Rev. 212, 213 (1960).

17. Unif. Guardianship & Protective Proc. Act § 106; *Restatement (Second) of Conflict of Laws* § 79 (1971); e.g. Ala. Code § 26-2A-30 (1992); D.C. Code § 21-2021 (West 2001); Haw. Rev. Stat. § 560:1-301 (2005); Mich. Comp. Laws § 700.1301 (2002); N.J. Stat. Ann. § 3B:12-1 (West 1983); 20 Pa. Consol. Stat. § 5511 (2005).

18. See Paulsen & Best, *supra* n. 16, at 213–214 (emphasis omitted) (explaining that “most statutes really seem to be solving a venue problem, i.e., deciding the question of which local court should exercise whatever power the court system may have been given rather than determining the limits of power in a case having important out-of-state facts”).

alleged incapacitated person (AIP), or “ward,” is domiciled;¹⁹ resides;²⁰ is domiciled or resides;²¹ is domiciled or present;²² is domiciled or found;²³ resides, is present, or found;²⁴ resides, is present, or is institutionalized;²⁵ resides or has been admitted to a health-care or correctional facility;²⁶ is domiciled, a resident, or present;²⁷ is an inhabitant or resident;²⁸ is domiciled or resides in public supported institution;²⁹ is a resident or brought into the state for care;³⁰ or is physically present.³¹ Most states additionally provide in rem venue in the county where the AIP has property.³²

19. *E.g.* Ala. Code § 26-2A-30; D.C. Code § 21-2021; Haw. Rev. Stat. § 560:1-301; Mich. Comp. Laws § 700.1301; N.J. Stat. Ann. § 3B:12-1; 20 Pa. Consol. Stat. § 5511.

20. *E.g.* 755 Ill. Comp Stat. § 5/11a-7 (1992); Miss. Code Ann. § 93-13-125 (2004); Ohio Rev. Code Ann. § 30.1-28-13 (West 2002); Okla. Stat. tit. 30, § 1-113 (Lexis 1991); R.I. Gen. Laws § 33-15-2 (1995); Tenn. Code Ann. § 34-3-101(b) (Lexis 2001). One case is illustrative of the use of residency, rather than domicile, to determine jurisdiction. When Eunice Nagel moved with her husband to South Dakota, her daughter Reba asked the Florida court to enjoin the move. *Merrett v. Nagel*, 564 So. 2d 229, 230 (Fla. 5th Dist. App. 1990). Eunice was never served with the Florida guardianship petition. *Id.* Reba then moved Eunice back to Florida where the Florida examining committee found her incompetent. *Id.* at 230–231. The husband also filed in South Dakota, where the court found Eunice incapacitated and appointed a guardian before the Florida court could appoint its own guardian. *Id.* at 231. The Florida court denied Reba’s petition based on the fact that Eunice and her husband were residing in South Dakota. *Id.* Neither court considered whether Eunice had the capacity to choose her domicile.

21. *E.g.* Ark. Code Ann. § 28-65-202 (2004); Ky. Rev. Stat. § 387.520 (1999); *see e.g. Vinson Realty Co., Inc. v. Honig*, 362 S.E.2d. 602, 603 (N.C. App. 1987) (distinguishing between residence and domicile with residence being the temporary, although actual place of abode, while domicile is one’s permanent established home where one intends to remain for an indefinite length of time).

22. *E.g.* Colo. Rev. Stat. § 15-14-106 (Lexis 2005); Minn. Stat. § 524.5-106 (2006).

23. *E.g.* Mo. Rev. Stat. § 475.035 (2006).

24. *E.g.* Fla. Stat. § 744.202(1) (2006); Kan. Stat. Ann. § 59-3058(a)(1) (2005); Nev. Rev. Stat. § 159.037(1) (2003); N.D. Cent. Code § 30.1-28-02 (1996); S.C. Code Ann. § 62-5-302 (1987); S.D. Codified Ls. § 29A-5-108 (1997); Tex. Prob. Code Ann. § 610 (2003).

25. *E.g.* Alaska Stat. § 13.26.100 (2006); Ariz. Rev. Stat. Ann. § 14-5302 (West 2005); Idaho Code § 15-5-302 (2001); 18A Me. Rev Stat. Ann. § 5-302 (1998); Mont. Code Ann. § 72-5-311 (2005); Neb. Rev. Stat. § 30-2618 (1995); N.H. Rev. Stat. Ann. § 464-A:3(II) (West 2004); N.M. Stat. § 45-5-302 (2003); Or. Rev. Stat. § 125.020 (1)-(2) (2003); Utah Code Ann. § 75-5-302 (Lexis 1993); Wyo. Stat. Ann. § 3-1-103(a) (2005).

26. *E.g.* W. Va. Code § 44A-2-1 (2006).

27. *E.g.* La. Civ. Code Ann. art. 4541 (West 1998).

28. *E.g.* Mass. Gen. Laws ch. 201 § 1 (1994).

29. *E.g.* Wash. Rev. Code § 11.88.010(3) (2006).

30. *E.g.* Del. Code Ann. tit. 12 § 3901(a) (Lexis 2006).

31. *E.g.* Wis. Stat. § 54.30(2) (2006).

32. *E.g.* Ky. Rev. Stat. Ann. § 387.520(3).

Other possible venues, depending on the state, are available as follows: where the AIP may be admitted to a state institution;³³ where a debtor resides;³⁴ where the proposed guardian resides if a family member;³⁵ where the AIP resided immediately prior to becoming a patient in a hospital or resident in a nursing facility;³⁶ or where the spouse is domiciled.³⁷ California's venue provisions are perhaps the most encompassing, as they include where the person resides, is temporarily living, or simply what is in the best interest of the ward.³⁸

Interesting limits on venue, especially when venue is based on the AIP being found in a particular county, include Minnesota's provision that courts may have venue based where the AIP is present only in cases of emergency or temporary guardianships.³⁹ Georgia, on the other hand, eliminates presence jurisdiction if it appears that the proposed ward was removed to that county solely for the purposes of filing such an action.⁴⁰ North Carolina limits presence jurisdiction to those cases where the domicile or residence cannot be determined.⁴¹ North Dakota's provision adds that the AIP must be "expected to remain" in that county during the pendency of the case.⁴²

Presence may be the least compelling reason for a court to assume jurisdiction over a guardianship matter⁴³ because "[t]hat static, rigid consideration, standing alone, that the incompetent is present ('found') in the state . . . could result (by reason of forced seizure by another) in the allowance of proverbial 'body snatching,' or a rule of 'seize-and-run' . . ."⁴⁴ This "finders-keepers"

33. *E.g.* Alaska Stat. § 13.26.100; N.Y. Mental Hyg. Law § 81.05 (McKinney 2006).

34. *E.g.* Fla. Stat. § 744.202(2)(c).

35. *E.g.* Okla. Stat. tit. 30, § 1-115(A)(2).

36. *E.g.* Va. Code Ann. § 37.2-1001 (Lexis 2005).

37. *E.g.* Wash. Rev. Code § 11.88.010.

38. Cal. Prob. Code Ann. § 2201 (West 2002).

39. Minn. Stat. § 524.5-108.

40. Ga. Code Ann. § 29-5-108 (2003).

41. N.C. Gen. Stat. § 35A-1103(a) (2005).

42. N.D. Cent. Code § 30.1-28-02 (1996).

43. Rigid application of jurisdiction based on where the person is "found" may not be in the best interests of the person. Paulsen & Best, *supra* n. 16, at 221 (citing *In re Plucar's Guardianship*, 72 N.W.2d 455, 461 (Iowa 1955) (recognizing that "[i]t is sometimes held to be desirable to determine the custody of children found within the territorial jurisdiction even though their domicile is elsewhere")).

44. A. Frank Johns, *Subject-Matter Jurisdiction, Domicile and the Jet-Age Independence of Vulnerable Adults*, 1 Natl. Guardianship J. 291, 306 (1990) (citing Seymore W.

model “gives each state immediate right of intervention in order to protect and preserve the best interests of the individuals involved.”⁴⁵ However, “[t]he practical application of the principal may promote a ‘seize and run’ mentality as more sophisticated struggles occur between family members who fight for some legal edge by which they may have control of the life and the assets of the vulnerable individual involved.”⁴⁶

As Minnesota, Georgia, North Carolina, and North Dakota have recognized, the fact that an individual is found within the state may not be sufficient to assume jurisdiction and may give rise to an investigation concerning how the AIP came to be present.

A District of Columbia (D.C.) case illustrates why the AIP presence should not be considered *prima facie* evidence of a court’s jurisdiction.⁴⁷ Ms. Uwazih, a Nigerian citizen legally residing in Virginia, was severely injured in Virginia and was subsequently transferred to a D.C. hospital for treatment.⁴⁸ Her personal injury attorney filed petitions to appoint both a guardian and a conservator in the D.C. court.⁴⁹ The hospital moved to dismiss the petition due to the court’s lack of jurisdiction over a Virginia resident.⁵⁰ The hospital further alleged that her attorney was trying to manufacture diversity to enable her negligence suit in Virginia to be filed in federal court.⁵¹ The trial court dismissed the petitions for guardianship and conservatorship because Ms. Uwazih was not a D.C. domiciliary, her presence in the District was pure happenstance, and any funds eventually generated through her eventual negligence suit could be distributed to her care providers in Virginia.⁵² The appellate court found that because D.C. allowed presence jurisdiction under the Uniform Probate Code (UPC), Ms. Uwazih did not need to be domiciled in the

Wurfel, *Choice of Law Rules in North Carolina*, 48 N.C. L. Rev. 243, 246 (1970) (discussing the importance of using as the “Polar star” in child-custody jurisdictional disputes the best interest of the child, rather than a rule of “seize-and-run” based on presence of the child).

45. *Id.* at 323.

46. *Id.*

47. *In re Uwazih*, 822 A.2d 1074 (D.C. 2003).

48. *Id.* at 1075.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 1076.

District to determine if guardianship of the person was appropriate.⁵³ However, as Ms. Uwazih did not have property in D.C., she was not eligible for conservatorship.⁵⁴ During the appeals process, Ms. Uwazih was transferred from the D.C. hospital to Maryland,⁵⁵ raising the unaddressed issue of whether D.C. no longer had presence jurisdiction and the guardianship proceeding should begin anew in Maryland.

Venue provisions are just the beginning of the process of sorting out the problems associated with initial jurisdiction. Just because a case *could* be heard in a court does not resolve the issue of whether it *should* be decided there or whether it could more appropriately be decided elsewhere. A variety of venue options can be advantageous when they provide access to several forums, but multiple options invite chaos when circumstances suggest more than one possible venue.

Additionally, most venue provisions are only helpful in choosing among courts within one state. Advocates have to refer to other provisions to determine in which of the possible in-state courts they should proceed. Just half of all states have provisions for sorting out which possible venue is most preferred. The most typical provision is some variation on the UPC provision stating that if a petition could be maintained in more than one place, the court where the petition was first filed should determine where venue appropriately lies.⁵⁶ The other court should stay any proceeding until appropriate venue is determined.⁵⁷ The first court then transfers the case if proper venue is in the other court.⁵⁸ Various other provisions include notifying and consulting with the other court, requiring notice and hearing, and transferring the file or certified record so the receiving court may proceed as if the case were originally filed there.⁵⁹ Many of these “sort-out-the-venue” provisions also apply to situations later in the proceedings when improper or inconvenient venue is discovered⁶⁰ or when the

53. *Id.* at 1077.

54. *Id.* at 1079.

55. *Id.* at 1075 n. 1, 1080 n. 8.

56. *E.g.* Ark. Code Ann. § 28-65-202(b)(1).

57. *E.g. id.*; Ala. Code § 26-2A-32(b).

58. *Supra* n. 57.

59. *E.g.* Ark. Code. Ann. § 28-65-202(c).

60. *E.g.* Ind. Code § 29-3-2-1(b) (2006).

ward's residence changes.⁶¹ When mentioned, the standard for intrastate transfer of venue is best interest,⁶² interest of justice,⁶³ or good cause.⁶⁴

B. Interstate Jurisdiction

While these intrastate venue formulas are helpful if the controversy happens to arise in one of the twenty-five states that have such provisions, they fail to provide a solution to the more frequent problem of when petitions may be filed simultaneously in more than one state. Mrs. Edgewood's dueling daughters might live in the same state but file petitions in separate counties. In that situation, venue provisions are used to determine whether petitions were filed in the appropriate county. More than likely, the parties have filed their petitions in different states where the typical venue provisions are inapplicable but may nevertheless be used to justify jurisdiction.

The convoluted procedural path in *Mack v. Mack*⁶⁵ further illustrates how substantive issues can become intertwined with jurisdictional questions. A Maryland accident left Mr. Mack in a persistent vegetative state.⁶⁶ His wife was initially appointed as his guardian in Maryland where Mack was receiving medical care in a veteran's facility near Baltimore.⁶⁷ She then moved to Florida where she again sought guardianship with the authority to withhold nutrition and hydration as well as a discharge of the Maryland guardianship.⁶⁸ Several years later she petitioned the Florida court for permission to remove her husband's gastrostomy tube.⁶⁹ Mack's father petitioned the Maryland court to be ap-

61. *E.g.* Ark. Code. Ann. § 28-65-202(c)(2). Florida requires a change in venue when the AIP's residence changes. Fla. Stat. § 744.202(2)(c).

62. Ariz. Rev. Stat. Ann. § 14-5313.

63. Colo. Rev. Stat. Ann. § 15-14-108(4).

64. N.C. Gen. Stat. § 35A-1205.

65. 618 A.2d 744, 747, 749-751 (Md. 1993). The *Mack* court held that Florida did not have jurisdiction over a guardianship dispute despite discharging the wife's Maryland guardianship status in an earlier hearing. *See also Hoyt v. Sprague*, 103 U.S. 613, 632 (1880) (construing a Rhode Island statute to authorize appointing property guardians for non-resident infants domiciled in New York).

66. *Mack*, 618 A.2d at 746.

67. *Id.* at 747.

68. *Id.*

69. *Id.*

pointed guardian in a move to block the wife's Florida authority to make medical decisions about nutrition.⁷⁰ When the wife appealed the father's appointment based on her Florida authority, the Maryland court refused to grant full faith and credit to the Florida order because the Florida court never had jurisdiction and appointed the father as guardian.⁷¹ Mack had no connections with Florida;⁷² and his wife, as a Maryland guardian, could not consent to Florida's exercise of jurisdiction over him.⁷³ Thus, Mack had two guardians with different views over the continuation of treatment.⁷⁴ As Charlene Daniel and Paul Hannaford have noted, the Maryland Court of Appeals "conveniently glosse[d] over" the fact that the Maryland trial court had discharged the wife's previous Maryland guardianship, presumably because it recognized that Florida had jurisdiction.⁷⁵ In effect, it was Maryland that first created the opportunity for an interstate conflict over jurisdiction.⁷⁶

Only six states appear to explicitly address the interstate venue issues.⁷⁷ Arizona, Oregon, and North Dakota, adopting the model language of the UGPPA, direct the following:

If the court located at the place where the ward resides is not the court in which acceptance of appointment is filed, the court in which proceedings subsequent to appointment are commenced shall in all appropriate cases notify the other court, *in this or another state*, and after consultation with that court shall determine whether to retain jurisdiction or transfer the proceedings to the other court, whichever may be in the best interests of the ward. A copy of any order accepting a resignation, removing a guardian or altering au-

70. *Id.*

71. *Id.* at 747–748.

72. *Id.* at 751.

73. *Id.*

74. A. Frank Johns, Vicki Gottlich & Marlis Carson, *Guardianship Jurisdiction Revisited: A Proposal for a Uniform Act*, 36 Clearinghouse Rev. 647, 648 (1992).

75. Daniel & Hannaford, *supra* n. 2, at 358.

76. *See Mack*, 618 A.2d at 747 (noting that the Baltimore County Circuit Court discharged Deanna Mack's guardianship in December 1985).

77. Ariz. Rev. Stat. Ann. § 14-5313; Ind. Code § 29-3-2-2; Kan. Prob. Code § 59-3058; N.D. Cent. Code § 30.1-28-13(2); Or. Rev. Stat. § 125.015(2); Wis. Stat. § 54.30(2).

thority shall be sent to the court in which acceptance of appointment is filed.”⁷⁸

Kansas has the most innovative and comprehensive provisions for sorting through both intrastate and interstate venue and jurisdiction issues.⁷⁹ In Kansas, if the AIP is not a resident of the state, the court is given the option to dismiss the petition or to continue the matter for sixty days to allow for a petition to be filed in the AIP’s home state.⁸⁰ Indiana allows its court to transfer guardianship cases out of state, but only if the other state has assumed jurisdiction—which unfortunately does not assist in sorting out early venue problems.⁸¹

One solution for determining which state should proceed and which should yield is found in the National Probate Court Standards.⁸² The Standards rely on “race to the courthouse” venue rules when dueling petitions are filed within the state and “best suited” jurisdiction standards for interstate petitions.⁸³ In an interstate transfer case, the first-in-filing court determines proper venue, but the “best suited” court analyzes the substantive issues.⁸⁴ The “best suited” court is determined based on the ward’s location(s), asset location, existing, pending, or previous guardianships, and existing alternative surrogate arrangements.⁸⁵ Notice and communication are also hallmarks of the Standards.⁸⁶ This notice construct encourages parties to inform the court of other pending cases and gives the court the affirmative duty to determine if a proposed filing is a collateral attack on an existing or proposed guardianship—anywhere.⁸⁷ Interstate communication between judges is also encouraged, as the Standards recognize the

78. Ariz. Rev. Stat. Ann. § 14-5313 (emphasis added); Or. Rev. Stat. Ann. § 125.015(2); N.D. Cent. Code § 30.1-28-13(2) (emphasis added).

79. Kan. Prob. Code § 59-3058.

80. *Id.*

81. Ind. Code § 29-3-2-2(c)(4).

82. Natl. Prob. Ct. Stands. § 3.5.2, § 3.5.2 commentary (Natl. Ctr. St. Cts. 1993) (available at http://www.probatect.org/ohioprobatecourts/pdf/national_probate_standards.pdf).

83. *Id.* at §§ 3.5.2(a)–(b).

84. *Id.* at § 3.5.2(a)(2).

85. *Id.* at § 3.5.2 commentary.

86. See e.g. *id.* at § 3.5.1 (stating that “[p]robate courts in different jurisdictions and states should communicate and cooperate to resolve guardianship disputes and related matters”).

87. *Id.* at §§ 3.5.2(a)(1), 3.5.2 commentary.

importance of notifying the other court when multiple filings are pending, as well as developing rules that facilitate communication between courts.⁸⁸

As a consequence of this jumble of inconsistent state laws, the answer to the Edgewood family's dueling petitions can only be that it depends on which two states are involved. Courts in both states may have subject-matter jurisdiction and the venue may be proper for each proceeding. At a minimum, each court should be informed of the pending alternative proceeding. However, conducting simultaneous proceedings in both courts wastes judicial resources and depletes the AIP's estate by causing duplicative expenses. Further, simultaneous proceedings are virtually guaranteed to result in conflicting orders that will lead to additional litigation. Under the current disarray of state law, the chances are excellent that Mrs. Edgewood's daughters will exhaust a significant portion of her estate by litigating in two states with local counsel in each state trying to convince their respective courts to proceed or dismiss in favor of the other state.

The long-running case of Lillian Glasser highlights the imbroglio of contentious litigation resulting from conflicting jurisdictional provisions. Mrs. Glasser was an elderly life-long resident of New Jersey who wintered in Florida near her son and frequently visited her daughter who lived in Texas.⁸⁹ In March 2005, Mrs. Glasser's daughter, becoming concerned about her mother's condition, moved her mother to Texas and initiated temporary guardianship proceedings there based on her mother's presence in the state.⁹⁰ Using a New Jersey power of attorney, the daughter also transferred Mrs. Glasser's \$25 million estate to a Texas limited partnership under the daughter's control.⁹¹ Mrs. Glasser's Florida son and New Jersey nephew intervened to contest the daughter's actions.⁹² After a year of legal wrangling, the son and nephew

88. *Id.* at § 3.5.1.

89. Ralph Blumenthal, *A Family Feud Sheds Light on Differences in Probate Practices from State to State*, N.Y. Times A12 (Dec. 28, 2005).

90. *Id.*

91. *Id.*

92. The Author briefly represented the son in the Texas proceeding to brief a motion to transfer the Texas proceedings to New Jersey. The motion, filed on June 14, 2005, urged the Texas judge to consider the questionable circumstances by which Mrs. Glasser was brought into, and held in, Texas as well as her on-the-record preference to return to her home and friends in New Jersey. The motion also requested that the court consult with the

were able to convince the Texas court to stay its proceedings so that the New Jersey court could proceed.⁹³ New Jersey, in contrast to Texas' recognition of presence jurisdiction, clearly requires proof that the AIP is domiciled in the state before the court can proceed in guardianship matters.⁹⁴ Following thirty-four days of trial, the New Jersey court appointed independent guardians for Mrs. Glasser's person and estate.⁹⁵ The court also found that Mrs. Glasser's daughter had exercised undue influence in procuring a power of attorney and had breached her fiduciary duty in transferring funds to the limited partnership.⁹⁶ Media sources report that multiple appointed and retained lawyers, *guardians ad litem*, appointed attorneys ad litem, temporary guardians, and their respective lawyers in both states and a federal court have expended a reported \$3 million dollars in legal fees to date.⁹⁷

The Mollie Orshansky case is perhaps the most high-profile interstate jurisdiction case to date. While working for the Social Security Administration during the 1960s, Ms. Orshansky developed the formula for determining the poverty level.⁹⁸ Much later in life she became unable to manage her affairs.⁹⁹ Although Ms. Orshansky had lived and worked in D.C. for decades, she had made plans to return to her "home" in New York where she owned an apartment, had set up a trust naming her New York sister as trustee, and where her healthcare agent, a New York niece, re-

New Jersey judge in accordance with the National Probate Court Standards. After an attempt to resolve the dispute via mediation, visits to both New Jersey and Florida, investigations of abuse in both states by adult protective services, and reams of legal maneuvering, the Texas judge finally consulted with the New Jersey court on January 5, 2006. The New Jersey court assumed primary jurisdiction of the case on March 3, 2006. *In re Glasser*, 2006 WL 510096 at *2 (N.J. Super. Ch. Div. Mar. 3, 2006).

93. *In re Glasser*, No. 209568, slip op. at 4 (Sup. Ct. N.J. Mar. 8, 2007).

94. *In re Seyse*, 803 A.2d 694, 698 (N.J. Super. App. Div. 2002); *In re Jacobs*, 717 A.2d 432, 433 (N.J. Super. Ch. Div. 1998). New Jersey has shown particular sensitivity to the potential problem of "multi-jurisdictional squabble[s]" involving alleged incapacitated persons "who, in their twilight years, need not and should not become a *res* fought over by warring children and welcoming courts." *Id.* at 437.

95. *In re Glasser*, slip op. at 81.

96. *Id.* at 71–72.

97. *E.g.* John MacCormack, *Courts' Captive About to Leave Texas*, San Antonio Express-News 1B (Jan. 17, 2006).

98. Sewell Chan, *Mollie Orshansky, Statistician, Dies at 91*, N.Y. Times B9 (Apr. 17, 2007).

99. *See In re Orshansky*, 804 A.2d 1077, 1080–1081 (D.C. 2002) (describing Ms. Orshansky's inability to care for herself).

sided.¹⁰⁰ However, time and failing health caught up with Ms. Orshansky before she could fulfill her plans. When her resident manager reported to Washington, D.C. Adult Protective Services (APS) that she appeared disoriented, APS had her admitted to a D.C. hospital and filed for guardianship and conservatorship.¹⁰¹ The niece took her from the hospital, moved her to New York, and filed for guardianship there, displeasing the D.C. judge.¹⁰² The D.C. court appointed a D.C. guardian and conservator and ordered Ms. Orshansky's return to D.C.¹⁰³ The niece/agent challenged the D.C. court's jurisdiction and when her jurisdictional challenge was denied at the trial level, she appealed.¹⁰⁴

The D.C. appellate court recognized that even though a court may technically have jurisdiction, there are often good reasons for it not to proceed. Although D.C. had jurisdiction over Ms. Orshansky as a resident and domiciliary who was present in the District when the initial petition was filed, the trial court abused its discretion in appointing a guardian and conservator by not

giving the wishes of Mollie Orshansky the consideration to which they were entitled by law. . . . Any fair decision in this case would have to take into account the benefits that Ms. Orshansky might reap from residing in her own, familiar apartment in close proximity to, and in ongoing contact with, her sister and other relatives.¹⁰⁵

The D.C. case was dismissed so that the family could proceed with appropriate guardianship proceedings in New York.¹⁰⁶

The *Glasser* and *Orshansky* battles illustrate the current disarray of state laws that creates an environment in which procedural posturing obscures what is in the best interests of the incapacitated person. As one judge observed, cases like these can be characterized as "jurisdictional 'spitting contests.'"¹⁰⁷ Without uni-

100. *Id.* at 1087.

101. *Id.* at 1079.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* at 1095, 1102.

106. *Id.* at 1104.

107. Natl. College Prob. JJ., *supra* n. 9, at 2 (quoting an unnamed Arizona judge).

form laws throughout the states, courts must resolve jurisdictional questions on an ad hoc basis.

III. INTERSTATE RECOGNITION

*The court in State H appoints Ms. Blum as guardian of the estate and of the person for Mr. Appleby. After that appointment, Ms. Blum discovers that Mr. Appleby owns a small parcel of undeveloped land in State K that she needs to sell to pay for Mr. Appleby's care. Ms. Blum also needs to place him in a rehabilitative facility just across the state line in State M. Can Ms. Blum sell the real estate and make placement decisions in the neighboring states?*¹⁰⁸

Chances are good that she will have a much easier time selling the real estate than she will have making personal healthcare decisions.¹⁰⁹ Most states have procedures to recognize the authority granted in another state to a conservator to make property decisions, but most state statutes are silent about personal decisions.¹¹⁰ Thirty-nine states have some process for the out-of-state conservator to act but usually only if there is no local conservator or pending proceeding.¹¹¹ What the conservator must do to gain recognition varies. Most of these states require that the conservator merely file copies of the order and bond without need to reexamine the incapacitated person's capacity.¹¹² Some states allow the conservator to collect debts and receive money or property on proof of appointment and affidavit,¹¹³ while other states specify what the out-of-state conservator can or cannot do, such as remove personal property, sell real property, or maintain suits.¹¹⁴ Still other states grant the conservator all the powers given to a

108. This hypothetical, and much of the following section, is adapted from Hurme, *supra* note 4, at 4.

109. *Id.*

110. *Id.*

111. *Id.* at 5.

112. *Id.*; e.g. N.M. Stat. § 45-5-432 (2003).

113. Hurme, *supra* n. 4, at 5; e.g. Mich. Comp. Laws § 700.5432(1).

114. Hurme, *supra* n. 4, at 5; e.g. Ark. Code Ann. § 28-65-601(a); Ga. Code Ann. § 29-2-19; Iowa Code § 633.605.

local conservator.¹¹⁵ In these states, the foreign conservator does not come under the supervision of the local court but rather the neighboring court, which recognizes the authority granted by the originating court for the foreign conservator to conduct business in another state.¹¹⁶

Several states require the foreign conservator to petition to be appointed as a local conservator, generally requiring notice and a hearing.¹¹⁷ Although practice may be different than statutory language, it appears that when foreign conservators petition for appointment in the new jurisdiction, they have dual authority and reporting responsibilities to *both* states.¹¹⁸ Full petitioning, notice, and hearing may be unduly cumbersome—and expensive, particularly if the conservator needs only to conduct a single transaction.

Ohio and Arkansas take dramatically different approaches in their hospitality to foreign conservators.¹¹⁹ Ohio clearly prefers in-state conservators, stating that the “appointment may be made whether or not a ward has a guardian, trustee, or other conservator in the state of his residence.”¹²⁰ Even if a ward already has a foreign conservator, “the control and authority of the resident guardian appointed in Ohio shall be superior as to all property of

115. Hurme, *supra* n. 4, at 5; e.g. Cal. Prob. Code § 2107(b) (stating that “[a] guardian or conservator of the estate of a nonresident has, with respect to the property of the nonresident within this state, the same powers and duties as a guardian or conservator of the estate of a resident”); Ky. Rev. Ann. § 387.520(3) (permitting a domiciliary foreign conservator to act as a local conservator in some circumstances).

116. These statutes challenge the traditional thinking that a guardian’s legal authority is restricted to the appointing state.

[I]t is very doubtful, to say the least, whether even a guardian appointed in the state of the domicile of the ward (not being the natural guardian or a testamentary guardian) can remove the ward’s domicile beyond the limits of the state in which the guardian is appointed, and to which his legal authority is confined . . . [T]he law of the domicile of the ward has no extraterritorial effect, except by the comity of the state where the property is situated, or where the guardian is appointed.

Lamar v. Micou, 112 U.S. 452, 472 (1884).

117. Hurme, *supra* n. 4, at 5; e.g. W. Va. Code §§ 44A-1-12(a)–(b) (2006).

A guardian, conservator or like fiduciary appointed in another state may be appointed to serve as a guardian or conservator in this state . . . [and] [u]pon proper notice of hearing to all persons . . . a hearing shall be held, at which the court may, in its discretion, determine that the appointment in another state has sufficiently fulfilled the requirements of this chapter.

W. Va. Code §§ 44A-1-12(a)–(b).

118. Daniel & Hannaford, *supra* n. 2, at 377.

119. Hurme, *supra* n. 4, at 6.

120. *Id.*; Ohio Rev. Code Ann. § 2111.37.

the ward in Ohio.”¹²¹ Arkansas, on the other hand, is less xenophobic.¹²² If there is both a local guardian and a foreign guardian, the court may terminate the local guardianship and order payment, transfer, or delivery of property to the foreign guardian.¹²³

New Hampshire is perhaps unique in making it easier for foreign guardians of the person to act in the state than foreign guardians of property.¹²⁴ If the ward is temporarily in the state, the foreign guardian has full faith and credit recognition of the personal powers granted by the original court.¹²⁵ On the other hand, a guardian of the estate must petition to be appointed as a New Hampshire guardian, post bond, and account to the New Hampshire court.¹²⁶

Ms. Blum, as guardian of the person, may have a more difficult time gaining recognition of her authority to place Mr. Appleby in a rehabilitative facility in another state.¹²⁷ Only thirteen states extend some recognition to foreign guardians to make personal care decisions outside of the realm of managing real estate or collecting debts or personal property.¹²⁸ Delaware is one of those states. Its provision reads as follows:

When no guardianship of the person proceeding is pending in this State, a guardian of the person, or other like fiduciary, appointed by an appropriate court of another jurisdiction to care for the person of a disabled person who is a resident of that jurisdiction, whenever such disabled person is brought into the State for care and maintenance, such foreign fiduciary may . . . exercise all powers granted by the other jurisdiction for the care and protection of the person of such nonresident disabled person.¹²⁹

121. Ohio Rev. Code Ann. § 2111.37.

122. Hurme, *supra* n. 4, at 6.

123. *Id.* at 6–7; Ark. Code Ann. § 28-65-602(b)(1). In Arkansas, the court also can order the local guardian to take the action the foreign guardian was seeking or deny the foreign guardian’s petition. *Id.* at § 28-65-602(b)(2).

124. Hurme, *supra* n. 4, at 7.

125. *Id.*; N.H. Rev. Stat. Ann. § 464-A:44(II).

126. Hurme, *supra* n. 4, at 7; N.H. Rev. Stat. Ann § 464-A:44(I).

127. Hurme, *supra* n. 4, at 6.

128. *Id.*; *e.g.* Del. Code Ann. tit. 12, § 3904(b).

129. Hurme, *supra* n. 4, at 7; Del. Code Ann. tit. 12, § 3904(b).

Two recent cases involving the Illinois Office of State Guardian illustrate the problems guardians face in trying to obtain appropriate treatment for their wards in neighboring states. In the first case, Steven Prye began showing signs of mental illness while working as a law professor at the University of Illinois.¹³⁰ After several unsuccessful attempts at institutionalization, the Illinois Office of State Guardian became his guardian and transferred him to a hospital in St. Louis, Missouri.¹³¹ When the hospital petitioned for the appointment of the Public Administrator for the City of St. Louis, who serves as a public guardian in Missouri, the Illinois public guardian moved to dismiss on the grounds that it was already Mr. Prye's guardian with authority to seek mental health treatment.¹³² The trial court refused to recognize the Illinois order and directed the Illinois guardian to move the patient back to Illinois.¹³³ Although Prye was back in Illinois by the time of the appeal, the appellate court held that the trial court erred in failing to give full faith and credit to the Illinois order.¹³⁴

Following in the footsteps of Mr. Prye, an Illinois conservator sought electroconvulsive treatment (ECT) for Myrtle Dunn, an Illinois resident with chronic schizophrenia.¹³⁵ The treating hospital was located in St. Louis, Missouri, only twenty minutes from Ms. Dunn's home in Illinois.¹³⁶ When the hospital sought to comply with Missouri requirements to seek prior authorization for ECT, the court rejected the petition *sua sponte* for lack of jurisdiction. The court held that under Missouri law,¹³⁷ only a guardian could petition for ECT for an incompetent patient, the Illinois guardian's authority could not be recognized in Missouri, and the Illinois patient could not consent to voluntary treatment because the Illinois court had found the patient incapacitated.¹³⁸ The appellate court reversed, finding that the trial court erred in refusing to recognize and give effect to the Illinois conservator's au-

130. *In re Prye*, 169 S.W.3d 116, 117 (E.D. Mo. 2005).

131. *Id.* at 117–118.

132. *Id.* at 118.

133. *Id.* at 119.

134. *Id.* at 122.

135. *In re Dunn*, 181 S.W.3d 601, 603 (E.D. Mo. 2006).

136. *Id.*

137. Mo. Rev. Stat. § 630.130(4).

138. *In re Dunn*, 181 S.W.3d at 603.

thority under the Full Faith and Credit Clause of the United States Constitution.¹³⁹

The 1997 UGPPA sets out the same procedures for both guardians and conservators to use in gaining recognition of their authority in another state.¹⁴⁰ Either must petition in the new state for appointment as a local guardian or conservator by furnishing proof of appointment and a certified copy of the appointing court record and by providing notice to the ward and to other persons entitled to notice.¹⁴¹ No hearing is required.¹⁴² The court must make the appointment unless doing so would not be in the best interest of the ward.¹⁴³ By comparison, under the NCPJ model statute, the original court keeps the guardianship but allows the guardian or conservator to act in the new state.¹⁴⁴ The guardian or conservator petitions in the new state for recognition of the original order without petitioning for appointment.¹⁴⁵ The original court gets notice of the petitioning and reports on actions taken in the temporary state.¹⁴⁶

Conservator Blum mostly likely will be able to sell Mr. Appleby's real estate in the neighboring state without too much expense or delay. She will have to reference the other state's laws to find out what formalities will be necessary. If ancillary proceedings are required, they generally will be abbreviated without the need to relitigate the issue of capacity. However, stories abound of attorneys who file ancillary proceedings in one state to sell property belonging to the incapacitated person, only to find that local courts give deference to any adverse party in the state where the property is located.¹⁴⁷ Heirs of the incapacitated person may seek to protect their interests in the real estate when the conservator seeks to sell the property by intervening in the ancillary proceed-

139. *Id.* at 606.

140. Hurme, *supra* n. 4, at 7; Unif. Guardianship & Protective Proc. Act at § 107(c); see Colo. Rev. Stat. § 15-14-107 (explaining that a guardian, conservator, or a similar fiduciary that is appointed in another state may petition the court for appointment as a guardian or conservator in Colorado).

141. Hurme, *supra* n. 4, at 7; Unif. Guardianship & Protective Proc. Act at § 107(e).

142. Zetlin, *supra* n. 11, at 3.

143. *Id.*

144. Hurme, *supra* n. 4, at 7; Natl. College Prob. JJ., *supra* n. 9, at app. D.

145. *Id.*

146. *Id.*

147. Zetlin, *supra* n. 11, at 3.

ing to relitigate the issues of capacity, selection of guardian, and extent of authority previously decided.¹⁴⁸

Whether Ms. Blum can make medical decisions for Mr. Appleby while he is getting therapy in another state is a harder question to answer. Most states apparently have not considered whether or how to recognize a foreign guardian's authority to make personal care decisions when a ward moves temporarily into the state or needs to receive treatment in another state.

In the absence of consistent provisions to resolve interstate jurisdiction issues, one New York court has stressed the need to focus on the best interests of the incapacitated person, rather than the wishes of feuding family members. In a contested guardianship proceeding in New York, the four children of Shirley Nimon originally agreed that she should reside for six months in a nursing facility in Pennsylvania near one daughter, Kathleen, and the rest of the year in a Massachusetts facility near a second daughter, Karen, with family members serving as co-guardians of both the property and the person.¹⁴⁹ Concerned about the effects of transfer trauma on Mrs. Nimon, who suffered from Alzheimer's disease, the Pennsylvania co-guardian asked the New York court to modify the order by appointing her as sole guardian of the person and requiring Mrs. Nimon to receive care solely in Pennsylvania.¹⁵⁰ The New York court, reasoning that it would be unfair to Karen to have her mother remain in Pennsylvania, ordered Mrs. Nimon moved permanently to Massachusetts.¹⁵¹ The New York appeals court found this reasoning to be an improvident exercise of discretion. Due to the deleterious effects of relocation on Mrs. Nimon, it was in her best interests to remain in Pennsylvania with Kathleen as the sole guardian of the person.¹⁵²

IV. MONITORING AND ENFORCEMENT

The ability of the court to monitor guardianship cases becomes even more difficult than it already is when either the ward

148. *Id.*

149. *In re Nimon*, 789 N.Y.S.2d 596 (N.Y. App. Div. 4th Dept. 2005).

150. *Id.* at 597.

151. *Id.*

152. *Id.*

or guardian is no longer present in the jurisdiction.¹⁵³ Problems may arise if the guardian has failed to file a required report or accounting but is no longer in state and out of the reach of service of process. If the ward is located out of state, the court visitor or investigator who is charged with assessing the ward's care may not be able to visit the ward. When the ward has property in multiple states, it is logistically difficult for multiple courts to effectively monitor the guardian's management of the entire estate when there is just one guardian. Additionally, if there are multiple guardians for separate portions of the ward's property in various states, monitoring becomes even more complex.¹⁵⁴ If in rem jurisdiction gives the court authority to appoint a guardian or conservator to manage that property, does it also have jurisdiction over out-of-state property belonging to the ward? Assuming that it does, the guardian charged with managing property in multiple states may have difficulty obtaining bonding over the out-of-state property.¹⁵⁵

Included in the mix of monitoring and enforcing orders is the issue of which state should modify an existing order. A Minnesota decision illustrates the importance of determining which court is the most appropriate to modify existing orders entered in another state. New Mexico had appointed guardians for Ralph DeCaigny, while a Minnesota court appointed a local bank as conservator of his Minnesota property.¹⁵⁶ During the conservatorship proceeding, the Minnesota court determined that the New Mexico guardians had mismanaged the ward's funds, failed to make necessary reports to the New Mexico court on the ward's finances, and improperly used the ward's property.¹⁵⁷ After consulting with the New Mexico court, the Minnesota judge ordered the removal of the New Mexico guardians.¹⁵⁸ The Minnesota Court of Appeals

153. Daniel & Hannaford, *supra* n. 2, at 362; see generally Sally Hurme, *Steps to Enhance Guardianship Monitoring* 15 (ABA 1991) (explaining the difficulties with guardianship where the ward and guardian are in the same jurisdiction).

154. Daniel & Hannaford, *supra* n. 2, at 362–363.

155. *Id.* at 367 (noting that bonding companies may not be licensed to insure property located out of state).

156. *In re Guardianship of DeCaigny*, 1994 WL 25501 at *1 (Minn. App. Feb. 1, 1994).

157. *Id.*

158. *Id.*

concluded that the removal of the New Mexico guardians was in error for lack of jurisdiction.¹⁵⁹

Once a guardianship has been created, the court has the responsibility to ensure that the ward's personal well-being and property are being properly cared for. Most states require guardians to periodically report on their ward's status and conservators to file inventories and accountings.¹⁶⁰ During the guardianship, complaints may surface about the guardian's performance. Courts need the tools to be able to enforce their orders, demand compliance with reporting requirements, and track the management of person and property. These tools are perhaps even more important when either the ward or the guardian is geographically distant from the court.

V. INTERSTATE TRANSFER

Mrs. Grant's family, physician, and guardian all agree that Mrs. Grant would be better cared for if she were moved permanently from State W to State Z. Should Tim Johnson remain as her guardian in State W even though the ward is not present and has no property or ties in W? Must a new guardianship action be initiated in State Z? How does State Z acquire jurisdiction if Mrs. Grant is not currently present and does not have any property in State Z? Can her estate avoid the costs of starting all over in State Z with proof of capacity, guardian ad litem reports, appointment of local counsel, etc.? Should full faith and credit be granted to another court's order when someone other than the existing guardian initiates proceedings in a new state?¹⁶¹

Under existing law, Mr. Johnson can relatively easily transfer the Grant guardianship in only a small handful of states.¹⁶² Seventeen states have established procedures to transfer a case to

159. *Id.*

160. Sally Balch Hurme & Erica Wood, *Guardian Accountability Then and Now: Tracing Tenets for an Active Court Role*, 31 Stetson L. Rev. 867, 899 (2002).

161. This hypothetical is adapted from Hurme, *supra* note 4, at 8.

162. *Id.*

a new jurisdiction when the ward relocates.¹⁶³ In the remaining states the question is open as to how to coordinate the opening of a new case in a new state and the closing of the existing case without incurring the substantial expense of repeating all of the procedures. Legitimate concerns may arise in the original court as to whether the new court will assume the monitoring responsibilities for the care of the ward as if it were one of its own cases.¹⁶⁴ The receiving court may have concerns if the definition of incapacity is significantly different or if the due process protections afforded an AIP are weaker. Transfer issues may further arise if the family seeks to forum shop for a state with more favorable Medicaid eligibility requirements or with laws concerning termination of life support compatible with family member views.¹⁶⁵

Furthermore, there exists the very real question of how to gain jurisdiction in the new court if the ward is not yet present or residing or domiciled in that state. Under the traditional definition of domicile, the individual must have the intent to establish a new residence,¹⁶⁶ but does an incapacitated person have the legal capacity to form that intent?¹⁶⁷ Likewise, does the guardian's au-

163. Ala. Code § 26-2A-111(b); Alaska Stat. § 13.26.155(b); Ariz. Rev. Stat. Ann. § 14-5313(B); Colo. Rev. Stat. § 15-14-107; Idaho Code § 15-5-313(b); Ind. Code § 29-3-9-2; Kan. Stat. Ann. § 59-3061(a); Mo. Rev. Stat. § 475.055(3); N.H. Rev. Stat. Ann. § 464-A:45(I); N.J. Stat. Ann. §§ 3B:12-61–3B:12-62; Or. Rev. Stat. Ann. § 125.540(1); S.C. Code Ann. § 62-5-313(b); S.D. Codified Laws §§ 29A-5-109, 29A-5-114; Tenn. Code Ann. § 34-1-117(b); Vt. Stat. Ann. tit. 14, § 2923(a); W. Va. Code § 44A-1-7; Wis. Stat. § 54.30(2).

164. *Lamar*, 112 U.S. at 471–472.

If the duties of the guardian were to be exclusively regulated by the law of the State of his appointment, it would follow that in any case in which the temporary residence of the ward was changed from State to State, from considerations of health, education, pleasure[,] or convenience, and guardians appointed in the different states, even if the same persons, might be held to diverse rules of accounting for different parts of the ward's property It may be suggested that this would enable the guardian, by changing the domicile of his ward, to choose for himself the law by which he should account.

Id. at 471.

165. Johns et al., *supra* n. 74, at 647. The authors also cite as causes for the increase in interstate transfer issues the need to relocate the ward close to family members who can provide care and prevent interfamily conflict. *Id.*

166. *Desmare v. U.S.*, 93 U.S. 605, 610 (1876) (stating that “[a] domicile once existing continues until another is acquired” because “[a] person cannot be without a legal domicile somewhere”).

167. Generally, the determination of whether an incapacitated person can form the intent to change domicile is a factual issue. Johns, *supra* n. 44, at 317 (citing *Federal Trust Co. v. Allen*, 204 P. 747 (Kan. 1922); *In re McCormick*, 260 Ill. App. 36 (Ill. App. 1st Dist. 1931), *rev'd on other grounds* 178 N.E. 195 (1931); *Miller v. Nelson*, 35 So. 2d 288 (Fla.

thority to select a place of abode include the authority to establish domicile in another state? In some cases, the guardian faces a “catch-22.” If the ward is not yet a resident, presence venue provisions will not apply to initiate a new proceeding because typically there is no appropriate venue in the new state to determine if the AIP should become a resident.¹⁶⁸ If the guardian moves the AIP to the new state (without considering whether the present state can or would give the guardian the authority to change residence to another state), the recognition provisions will not apply to a resident incapacitated person.

An Illinois family was faced with this problem of how to create a guardianship in a state where the ward did not yet live. Jane E.P. lived in an Illinois nursing home.¹⁶⁹ Her Illinois guardian, who was also her sister, and other relatives who lived just across the border in Grant County, Wisconsin, wanted to move Jane closer to home to a facility in Grant County.¹⁷⁰ Although the Illinois court had already determined that because of her neurological disorder, Jane was substantially incapable of managing her personal finances and property and could not care for herself, the family initiated a completely new guardianship in Wisconsin.¹⁷¹ As part of the petition process, the Unified Board of Grant and Iowa Counties was asked to make a comprehensive evaluation of Jane.¹⁷² The Board moved to dismiss the guardianship and protective placement petition because Jane was not a Wisconsin resident.¹⁷³ The circuit court agreed and dismissed the petition based on Jane’s non-residency.¹⁷⁴ The court of appeals reversed on the grounds that the state law requiring residency violated Jane’s constitutional right to interstate travel.¹⁷⁵

The Wisconsin Supreme Court took a different route to resolve the problem. It noted that courts around the country have

1948)).

168. *Id.*

169. *In re Guardianship of Jane E.P.*, 700 N.W.2d 863, 865 (Wis. 2005).

170. *Id.*

171. *Id.* at 866.

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

“struggled mightily” with problems associated with interstate guardianship, including the following:

What happens when the relatives are in different states and are fighting over which state most appropriately should exercise jurisdiction? What happens when the motives are not based on what is in the best interest of the ward, but rather on the fortune of the ward who has property in several states?¹⁷⁶

It is important to note that Jane’s case presented no substantive issues. The family was in harmony over the transfer, and the Illinois court had determined that the placement in Wisconsin was in her best interest.¹⁷⁷ The only objectors were the county officials concerned with the expenditure of county funds for the capacity assessment and subsequent care of Jane.¹⁷⁸

To fill the vacuum caused by the absence of any Wisconsin laws on case transfer, the Wisconsin court adopted the National Probate Court Standards because “[t]hese standards, steeped in a spirit of comity, promote the orderly administration of justice”¹⁷⁹ and “protect the integrity of the original court’s determination of what is in the best interests of the ward.”¹⁸⁰

In its next legislative session, the Wisconsin legislature heeded the encouragement of its Supreme Court¹⁸¹ and enacted procedures for the transfer of a foreign guardianship into Wisconsin.¹⁸² The transfer of a foreign guardianship for a foreign ward who resides or intends to move into Wisconsin must begin with the filing of a petition.¹⁸³ The petition includes the reason for transfer along with certified copies of all foreign orders, the address of the foreign court(s), and any other guardianship petitions pending or filed in any jurisdiction in the past twenty-four

176. *Id.* at 868.

177. *Id.* at 870.

178. *Id.* at 869–870.

179. *Id.* at 871.

180. *Id.* at 876.

181. *Id.* at 870–871.

182. Wis. Stat. § 54.30; see Wis. Leg. Ref. Bureau, *Wisconsin Legislative Spotlight*, “Recent Action on Bills,” <http://www.legis.state.wi.us/spotlight/spotl223.htm> (last revised May 22, 2006) (discussing “recent” actions during 2006 by the Wisconsin State Legislature).

183. Wis. Stat. at § 54.34(1).

months.¹⁸⁴ The petitioner must also provide contact information for any spouse, adult children, parents or siblings, person providing care, foreign attorneys, and *guardians ad litem*.¹⁸⁵

Notice of a Wisconsin petition for transfer given to the foreign ward, in plain language and large type, must state the right to a hearing on the petition, the procedures to follow to exercise that right, and the consequences of transfer.¹⁸⁶ Notice to the foreign court must request a certification of no knowledge that the foreign guardian has failed to perform any duties required by the foreign court or perform any prohibited acts.¹⁸⁷ The notice must also request copies of all relevant documents including *guardian ad litem* reports, practitioners' reports evaluating capacity, periodic status reports, and the order to transfer the case.¹⁸⁸ Interested persons, including appointed or retained counsel and *guardians ad litem*, must also receive notice that states the right to object and request a hearing.¹⁸⁹

Failure to provide these required notices deprives the court of jurisdiction.¹⁹⁰ The court also does not have jurisdiction if the foreign court fails to provide the requested certification and copies of orders within thirty days or give indication of compliance within a reasonable time.¹⁹¹ Others receiving notice include agents under any durable or medical power of attorney, person with legal or physical custody, and any agency providing aid or assistance.¹⁹² If anyone requests a hearing on the transfer petition, or to modify the original order, it must be held within ninety days after the petition is filed.¹⁹³ The court will stay its proceedings if someone receiving notice challenges the validity of the foreign guardianship or the authority of the foreign court, so those challenges may be heard in the foreign court.¹⁹⁴

184. *Id.* at §§ 54.34(3)(a)–(c).

185. *Id.* at §§ 54.34(3)(f)–(h).

186. *Id.* at § 54.38(1m)(a)(1).

187. *Id.* at § 54.38(1m)(a)(2)(a).

188. *Id.* at § 54.38(1m)(a)(2)(b).

189. *Id.* at § 54.38(1m)(a)(3).

190. *Id.* at § 54.38(1m)(a)(3)(b)(1).

191. *Id.* at § 54.38(1m)(b)(2).

192. *Id.* at § 54.38(2)(b).

193. *Id.* at § 54.44(1)(c).

194. *Id.* at § 54.44(3).

The Wisconsin petitioner must appear at the hearing, either in person or by telephone and must ensure the presence of the foreign ward unless the foreign *guardian ad litem* waives attendance.¹⁹⁵ The court may hold the hearing in a place convenient to the ward.¹⁹⁶ The petition will be dismissed if the court finds that the foreign guardian is not in good standing with the foreign court, has moved or is moving the ward to avoid or circumvent a foreign order, or that the transfer is not in the ward's best interests.¹⁹⁷

Once the petition is granted, the Wisconsin court must give full faith and credit to the foreign order.¹⁹⁸ However, the court can modify the surety bond, appointment of a *guardian ad litem*, reporting requirements, or other provisions to conform to state law.¹⁹⁹ In coordinating with the foreign court, the Wisconsin court can delay the effective date of acceptance, make acceptance contingent on termination of the foreign guardianship, or recognize concurrent jurisdiction for a reasonable time.²⁰⁰ Despite its elaborateness, however, the new Wisconsin statute does not address how to remove a case from Wisconsin, nor does it apply to conservatorship matters.

In 2005, New Jersey amended its statute to provide a process both to remove a case from New Jersey and to transfer one into the state.²⁰¹ A New Jersey guardian wishing to move to another state with the ward obtains an order from the court consenting to both the ward's transfer and the guardian's discharge, if applicable; however, the transfer must serve the ward's best interests.²⁰² To move a case into New Jersey, the foreign guardian files a summary action for transfer of the guardianship and appointment as guardian.²⁰³ The procedure can be used either when the ward is

195. *Id.* at § 54.44(4)(c). Although the code section does not identify which court has appointed the *guardian ad litem*, the legislative summary specifically uses the term "foreign guardian ad litem," and the code does not specifically require the Wisconsin court to appoint a *guardian ad litem* in the transfer process. *Id.*

196. *Id.*

197. *Id.* at § 54.46(1m).

198. *Id.* at § 54.46(1r)(b).

199. *Id.* at §§ 54.46(1r)(b)–(c).

200. *Id.* at §§ 54.46(1r)(d)(1)–(3).

201. N.J. Stat. Ann. §§ 3B:12-66(1)–(2).

202. *Id.* at § 3B:12-66(1).

203. *Id.* at § 3B:12-66(2).

already in the state or when domicile will be established in New Jersey.²⁰⁴ Notice of hearing is given to the ward, to persons entitled to notice under New Jersey law, and to the court in the other state.²⁰⁵ The application to receive the guardianship will be granted unless the court determines that the proposed New Jersey guardianship is a collateral attack or would not be in the ward's best interests.²⁰⁶ Full faith and credit is given to the determination of the ward's capacity.²⁰⁷

Missouri specifies that even if the ward or guardian move out of state, the guardianship is not terminated.²⁰⁸ Tennessee's transfer section applies either if both the ward and guardian move to another state or if the ward relocates to a new state where the court appoints a foreign guardian.²⁰⁹ Kansas decidedly gets the award for having enacted the most detailed process to petition the court to give full faith and credit to the prior adjudication, to appoint a guardian or conservator, and to terminate the other state's proceedings.²¹⁰ Indiana appears to be the only state that extends the extraterritorial reach of its own guardians.²¹¹ An Indiana guardian has the authority, upon the court's approval, to relocate the ward to another state.²¹²

Both the 1997 UGPPA and the NCPJ model statutes offer similar recommendations for transfer procedures. Each tries to smooth the transfer to another jurisdiction, eliminate unnecessary litigation costs, and ensure that the new jurisdiction takes over monitoring responsibilities.²¹³ The 1997 UGPPA simply allows the original court to transfer the case to another court, in-state or out-of-state if it is in the best interest of the ward or protected person.²¹⁴ There are no specific steps to accomplish this transfer.²¹⁵

204. *Id.*

205. *Id.* at § 3B:12-66(2)(b).

206. *Id.* at § 3B:12-66(2)(c).

207. *Id.* at § 3B:12-66(2)(d).

208. Mo. Rev. Stat. § 475.055.

209. Tenn. Code Ann. § 34-11-117; Hurme, *supra* n. 4, at 10.

210. Kan. Stat. Ann. § 59-3061; Hurme, *supra* n. 4, at 10.

211. Hurme, *supra* n. 4, at 11.

212. Ind. Code § 29-3-9-2; Hurme, *supra* n. 4, at 11.

213. *See generally* Unif. Guardianship & Protective Proc. Act; Natl. College Prob. JJ., *supra* n. 9 (recommending procedures for interstate guardianships).

214. Unif. Guardianship & Protective Proc. Act § 107(a).

215. *See generally* Unif. Guardianship & Protective Proc. Act § 107 (stating only gener-

The NCPJ model legislation sets out a more elaborate process calling for specific steps by the “transferring court” and the “accepting court.”²¹⁶ The guardian files both a notice of transfer and a final report with the transferring court, then notifies the ward and interested parties of the intent to transfer, right to object, and right to request a hearing.²¹⁷ The receiving court notifies the transferring court that it accepts the transfer and has imposed a new bond.²¹⁸ Although the ward’s capacity and the extent of the guardian’s powers do not need to be relitigated as part of the transfer proceedings, the ward can request a hearing and accepting court is to hold a review hearing shortly after acceptance.²¹⁹ However, the NCPJ model does not address how the accepting court achieves jurisdiction before the ward has moved or whether the guardian has the authority to make an out-of-state transfer. Instead, it presumes that the ward has moved and is now present in the jurisdiction, as well as that the guardian had the authority to make the out-of-state move.²²⁰

In the hypothetical case of Mrs. Grant,²²¹ Guardian Johnson may not have to relitigate the whole guardianship case if he moves his ward to one of the small number of states that have transfer provisions.²²² However, most of the states that do have recognition provisions limit them to non-resident wards or protected persons, so these provisions may not be available if the ward has already moved into the state.²²³

The case of Marguerite Seyse²²⁴ is typically complex. Mrs. Seyse was residing in an assisted living facility in New Jersey when her two daughters each sought appointment in New Jersey as guardian of person and property.²²⁵ Even though the daughters often disagreed, they were appointed as co-guardians.²²⁶ When

ally how such a transfer should occur).

216. Natl. College Prob. JJ., *supra* n. 9, at 21, 27.

217. *Id.* at 21–23.

218. *Id.* at 22.

219. *Id.* at 23.

220. *Id.*

221. *Supra* n. 161 and accompanying text.

222. Hurme, *supra* n. 4, at 9.

223. *Id.* at 9–10.

224. *In re Seyse*, 803 A.2d 694 (N.J. Super. App. Div. 2002).

225. *Id.* at 695–696.

226. *Id.* at 696.

Seyse became disruptive and could not remain in the New Jersey assisted living facility, the first daughter moved her to Connecticut without the court's or the second daughter's permission.²²⁷ The first daughter then petitioned a Connecticut court to appoint her as conservator.²²⁸ The New Jersey court dissolved the co-guardianship of person and property, appointed the first daughter guardian of the person and the second daughter guardian of the estate, and allowed Mrs. Seyse to remain in Connecticut.²²⁹ Although the New Jersey courts did not condone the unauthorized out-of-state move, the New Jersey appellate court affirmed that the first daughter was acting in the mother's best interests when she changed her mother's domicile to Connecticut and that it was within her authority to do so despite no prior court approval.²³⁰ The court stated that

[t]he idea of trundling an incompetent [ward] from state to state in search of procedural advantage is distasteful. To deny the guardian all power to change the ward's residence to the state in which the best treatment is available might seem equally distasteful.²³¹

Therefore, while the New Jersey court's rationale may seem appealing, it nevertheless raises questions as to whether the New Jersey court was the most appropriate to decide the issue and whether it could appropriately monitor the well-being of Mrs. Seyse in Connecticut.

Applying full faith and credit to another state's proceedings and orders is a logical way to reduce forum shopping by parties who do not like the way things are going in an existing guardianship case. Massachusetts used this constitutional principle when Margaret Enos' daughter, concerned that her mother was being mistreated, moved her from Florida to Massachusetts without authorization from either the Florida court or the Florida-appointed guardian.²³² The Massachusetts court directed the

227. *Id.*

228. *Id.*

229. *Id.* at 697.

230. *Id.* at 699.

231. *Id.* at 700 (quoting *Bethesda Lutheran Homes & Servs., Inc. v. Leean*, 122 F.3d 443, 449 (7th Cir. 1997)).

232. *In re Guardianship of Enos*, 670 N.E.2d 967, 967 (Mass. App. 1996).

daughter to pursue her concerns in Florida for reasons of full faith and credit, interstate comity, and the superior convenience of Florida as a forum to consider the mother's care by the Florida guardian.²³³

VI. UNIFORM LAW APPROACH

The current statutory lack of guidance or consistency results in unnecessary confusion, potential conflict, and inappropriate depletion of the ward's estate. Guardians and conservators, through their attorneys, seek either to gain a procedural advantage to continue the fight lost in another jurisdiction or merely to do what is in the best interests of the AIP in some other state. In an effort to provide consistent and uniform guidance to courts in transjurisdictional matters, the National Conference of Commissioners on Uniform State Laws (NCCUSL) has drafted a model interstate jurisdiction law.²³⁴ The model law is intended to be a stand-alone provision that would be accepted and adopted by states that do not follow the UPC or UGPPA.²³⁵ By the very nature of interstate problems, solutions can only come when there is consistency among states in how to address an out-of-state issue. One state's procedure on how to decide whether it does or should have jurisdiction to rule on a petition, acknowledge a guardian's or conservator's authority, modify or enforce an order, or close a case operates in a vacuum when another state is or should be involved.

A confluence of circumstances nudged NCCUSL to tackle the interstate jurisdiction issue. In 2001, Stetson University College of Law hosted the Second National Guardianship Conference, where representatives of sponsoring organizations²³⁶ involved with guardianship matters developed sixty-eight recommenda-

233. *Id.* at 969, 969 n. 8.

234. Unif. Adult Guardianship & Protective Procs. Jxn. Act (Natl. Conf. Commrs. on Unif. St. Ls., proposed draft 2007) (available at http://www.law.upenn.edu/bll/archives/ulc/ugjjaea/2007annualmeeting_draft.pdf). The Conference provides states with non-partisan draft legislation aimed at bringing clarity and stability to the law.

235. David M. English, *Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act 1*, http://www.law.upenn.edu/bll/archives/ulc/ugjjaea/2007march01_actecsummary.pdf (Mar. 1, 2007).

236. *The Second National Guardianship Conference: Recommendations*, 31 *Stetson L. Rev.* 595, 595 n. 1 (2002).

tions for improving guardianship practices.²³⁷ Included among these “Wingspan Recommendations,” as they were dubbed, was the recommendation that “[s]tandard procedures be adopted to resolve interstate jurisdiction controversies and to facilitate transfers of guardianship cases among jurisdictions.”²³⁸ Realizing, however, that conference recommendations have a tendency to sit ignored in archives, the National Academy of Elder Law Attorneys, the National Guardianship Association, and the NCPJ coordinated a special joint conference in 2003 to develop an Implementation Plan for the Wingspan Recommendations.²³⁹ The implementation step for interstate jurisdiction stated that

the National Conference of Commissioners on Uniform State Laws (NCCUSL) [should] adopt a stand-alone uniform act that includes provision for timeliness and for a presumption of validity for orders determining diminished capacity and appointing guardians among the states.²⁴⁰

The media focus on the *Orshansky* case led to congressional hearings on guardianship issues in 2003.²⁴¹ One outcome of the hearing was that Senate Select Committee on Aging chair Larry Craig directed the Government Accountability Office (GAO) to conduct an investigation of guardianship-monitoring issues.²⁴² The GAO recommended that the Department of Health and Human Services assist state and national organizations to review state policies for interstate transfer and recognition of guardianship appointments.²⁴³

237. *Id.* at 595.

238. *Id.* at 595. The comment to the recommendation states the following:

State legislatures can look to the model legislation proposed by the National College of Probate Judges. Guardianship portability, including adoption of a formal validation process for legal recognition of surrogate authority (*e.g.*, health care and financial powers) in other countries, should be addressed nationally and internationally.

Id. at 595 (citing Unif. Adult Guardianship & Protective Procs. Jxn. Act cmt.).

239. Natl. Guardianship Network, *National Wingspan Implementation Session: Action Steps on Adult Guardianship Progress 1* (Natl. Guardianship Network 2004).

240. *Id.* at 5.

241. Sen. Spec. Comm. on Aging, *Guardianships over the Elderly: Security Provided or Freedoms Denied?* 108th Cong. (Feb. 11, 2003) (testimony of witness Jane M. Pollack) (available at <http://www.aging.senate.gov/events/hr93hp.pdf>).

242. *Id.* (opening statement of Chair Larry Craig) (available at <http://www.aging.senate.gov/events/hr93lc.pdf>).

243. U.S. Gen. Accountability Off., *Guardianships: Collaboration Needed to Protect*

In October 2005, the NCCUSL convened a drafting committee to develop a uniform guardianship jurisdiction law.²⁴⁴ The draft act was titled the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to reflect that the Act covers guardianship-of-property and conservatorship matters as well as guardianship-of-the-person cases and applies only to adults.²⁴⁵ The Commission approved the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in August 2007.²⁴⁶

The launching point for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act is the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)²⁴⁷ which has been adopted in all states. It provides a framework in the child-custody arena to help states sort out which court has jurisdiction to decide child-custody issues.²⁴⁸ In child-custody disputes, the parties are typically the two parents who may be residing in different states during or following a divorce. One or both parents are seeking to determine which parent should have custody or to enforce or modify a custody order.

Incapacitated Elderly People 1 (U.S. Gen. Accountability Off. July 2004) (available at <http://www.gao.gov/new.items/d04655.pdf>).

244. Unif. Adult Guardianship & Protective Procs. Jxn. Act. Led by committee chair David Nixon and committee reporter David English, the committee includes selected state commissioners and advisors from the American Bar Association. Contributing representatives include the Author, a National Guardianship Board member; Terry Hammond, Executive Director of the National Guardianship Association; and K.T. Whitehead and Catherine Ann Seal, representing the National Academy of Elder Law Attorneys. For more information, please contact the Author at shurme@aar.org.

245. E-mail from David English, Natl. Conf. Rptr., to Elizabeth Cotton, *Unif. Adult Guardianship & Protective Procs. Jxn. Act* (May 13, 2005) (copy on file with Author).

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

247. The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), promulgated in 1997, replaced the Uniform Child Custody Jurisdiction Act (UCCJA). Natl. Conf. Commrs. on Unif. St. Ls., *Uniform Child Custody Jurisdiction and Enforcement Act*, http://www.nccusl.org/update/uniformact_summaries/uniformacts-s-uccjaea.asp (accessed Apr. 10, 2007). The old UCCJA was designed to discourage interstate kidnapping of children by the non-custodial parents. *Id.* The old UCCJA “operate[d] upon novel principles that (1) establish[ed] jurisdiction over a child custody case in one state; and, (2) protect[ed] the order of that state from modification in any other state, so long as the original state retains jurisdiction over the case.” *Id.* The UCCJEA was intended to reconcile the old UCCJA with the Parental Kidnapping Prevention Act (PKPA) and to add interstate civil enforcement for child custody orders. *Id.*

248. In 1992, guardianship reform advocates A. Frank Johns and Vicki Gottlich called for a uniform guardianship jurisdiction act parallel to the one for the custody of minors. Johns et al., *supra* n. 74, at 647.

The advisory committee was cognizant that guardianship matters involving adults are significantly different than custody issues involving minors.²⁴⁹ Guardianship cases are not about the “custody” of the incapacitated person; rather, they entail family members or other entities who may be dueling over who should have authority to make decisions regarding the care, well-being, and property of an adult at the initiation of a guardianship proceeding, or, as matters arise during the progress of the case, appropriate placement, treatment decisions, or property management. Yet, the guardian’s role is decidedly different than the parent’s role in managing the care and affairs of the incapacitated adult.

Additionally, there exists a fundamental structural difference between child-custody cases and guardianship cases. In custody cases, the typical parties are the two parents litigating issues regarding their offspring; in guardianship, the incapacitated person is the singular party.²⁵⁰ While the jurisdictional issues involving parents who themselves need to move with their child from one jurisdiction to another, or who seek to gain procedural advantage by moving with their child to another state, create problems that require clear protocol establishing the most appropriate jurisdiction to decide the matter, identifying the appropriate jurisdiction for adult-guardianship matters is more complex. Nevertheless, the apparent success and familiarity of the UCCJEA in identifying the appropriate jurisdiction offers a pattern and vocabulary worth adapting to the current guardianship-jurisdiction vacuum.

To address the issue of which court most appropriately has primary jurisdiction to initiate a guardianship proceeding, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act sets aside the current vocabulary of “residence,” “domicile,” or “presence” in favor of the more readily identifiable “bright line” of “home state.”²⁵¹ Home state is defined as the “[s]tate in which the respondent was physically present for at

249. Catherine Anne Seal, K.T. Whitehead & Shirley Berger, *Uniform Guardianship and Protective Proceedings Jurisdiction and Enforcement Act*, Natl. Acad. Elder L. Attys. Guardianship/Capacity SIG Bulletin 2 (Spring 2006).

250. See Johns et al., *supra* n. 74, at 650 (stating that a uniform law should be enacted so that an incapacitated person can litigate in the state in which they can present the best defense for a guardianship proceeding).

251. Seal et al., *supra* n. 249, at 2.

least six consecutive months immediately before the filing of a petition for the appointment of a guardian or protective order. A period of temporary absence counts as part of the six-month period.”²⁵² This construct, adopted from the UCCJEA,²⁵³ was selected to create a readily discernable demarcation that the often convoluted and contradictory determinations of “residency” and “domicile” do not provide. The new vocabulary also sets aside the troubling issues raised by jurisdiction based on the fleeting or contrived presence of the individual within a state. Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the objective is to fix jurisdiction in one and only one state.²⁵⁴

While the home state is the preferred jurisdiction, there are obviously circumstances in which other states should assume jurisdiction. To this end, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act incorporates the UCCJEA-like vocabulary of “significant-connection state” and “appropriate forum.”²⁵⁵ The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act recognizes that other states may have “significant connections” with the case.²⁵⁶ This state is defined as

252. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 102(6).

253. See generally Unif. Child Custody Jxn. & Enforcement Act (Natl. Conf. Commrs. on Unif. St. Ls. 1997) (available at <http://www.law.upenn.edu/bll/ulc/uccjea/final1997act.htm>) (setting forth the applicable uniform law for child-custody jurisdiction and enforcement disputes). The Child Custody Act “reverses the traditional approach of basing jurisdiction on the child’s location, and provides uniform guidelines to determine which state has the greatest interest in the custody dispute.” Johns et al., *supra* n. 74, at 650 (citing *May v. Anderson*, 345 U.S. 528 (1953)). The Hague Convention on the International Protection of Adults adopts the related construct of “habitual residence” to identify the state with primary jurisdiction. *Convention on the Intl. Protection of Adults* art. V (Jan. 13, 2000), 39 I.L.M. 7; see Nancy Coleman, Sally Hurme, John Kirkendall & Denzil Lush, *Cases that Cross Borders*, 1 J. Intl. Aging, L. & Policy 69, 70–77 (2005) (discussing the background history and application of the Hague Convention Act, including a discussion on “habitual residence”).

254. See Unif. Adult Guardianship & Protective Procs. Jxn. Act art. II (setting forth various provisions that establish jurisdiction over proceedings in one jurisdiction).

255. *E.g. id.* at § 203(2)(A) (using the terms “significant-connection state” and “appropriate forum” to illustrate when a jurisdiction besides the “home state” should proceed with the action).

256. See *id.* at §§ 102(15), 203(2) (defining “significant-connection state” and setting forth requirements for a “significant-connection state” to proceed with an action); see also Johns et al., *supra* n. 74, at 649 (stating that “[g]uardianship proceedings should be held in the state with the closest connections to the incapacitated adult, and in which significant evidence concerning his or her functional capabilities and needs are most readily available”).

one in which the respondent has significant connections—other than mere physical presence—and where substantial evidence concerning the respondent is available.²⁵⁷ A significant-connection state has jurisdiction if the individual does not have a home state or if the home state has declined to exercise jurisdiction on the basis that this other state is a more appropriate forum.²⁵⁸ If there are two possible states with significant connections, other than the home state, the first of those two to receive a petition may proceed.²⁵⁹ If there is no proceeding filed in the home state or other significant-connection state, and no objection to jurisdiction has been raised, a significant-connection state may proceed if it concludes that it is a more appropriate forum.²⁶⁰ This provision facilitates appointments in the average case where jurisdiction is not in dispute. If the home state and all significant-connection states have declined jurisdiction or the individual does not have a home state or significant-connection state, a court in another state has jurisdiction.²⁶¹ Even though that other state may have jurisdiction, any state where the individual is physically present has jurisdiction to appoint an emergency guardian²⁶² or, if there is property in the state, to enter a protective order with respect to that property.²⁶³ A state with jurisdiction, either as a home state

257. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 102(15). Johns, Gottlich, and Carson also note the following:

Physical presence in a state by itself would be insufficient to establish jurisdiction. However, courts could exercise jurisdiction over an alleged incapacitated adult present in the state if he or she had significant contacts in the state, and if there was substantial evidence in the state concerning his or her functional capabilities and needs.

Johns et al., *supra* n. 74, at 650 (citing *Intl. Shoe Co. v. Wash.*, 362 U.S. 310, 316 (1945)).

258. Unif. Adult Guardianship & Protective Procs. Jxn. Act §§ 203(2)–(3).

259. *See id.* at § 203(2)(B) (stating that a significant-connection state may not proceed unless “a petition for the appointment of a guardian or protective order has not been filed in the respondent’s home state or another significant-connection state”).

260. *Id.*

261. *Id.* at § 203(3).

262. *Id.* at § 204(a)(1).

263. *Id.* at § 204(a)(2). Johns, Gottlich, and Carson note that “[i]n a medical emergency or an emergency resulting from abuse, neglect, or mistreatment, the state in which the vulnerable adult is physically present would also have jurisdiction over a protective proceeding.” Johns et al., *supra* n. 74, at 650. Additionally, the grant of jurisdiction to a state that would otherwise not have jurisdiction to respond to an emergency follows the pattern of the Hague Convention. *See Convention on the Intl. Protection of Adults*, *supra* n. 253, at art. X (dictating that in cases of urgency a state where the adult is present has jurisdiction to take necessary measures of protection). As soon as a state with habitual residence jurisdiction takes action, the state with urgency jurisdiction loses jurisdiction for any further

or as a significant-connection state, may decline jurisdiction if it determines there is another state that is a more appropriate forum.²⁶⁴ Once a court has jurisdiction, however, its jurisdiction is exclusive and continues until the proceeding is terminated or transferred to another court.²⁶⁵

A key provision to assist the courts in determining which court is the more appropriate forum is the list of specific factors found in Section 206.²⁶⁶ Those factors to be considered include the following: the respondent's expressed preferences; if abuse, neglect, or exploitation has occurred or is likely to occur, which state could best protect the respondent from abuse, neglect, or exploitation; how long the respondent has been in the state; the respondent's distance from the court; the respondent's financial circumstances; the nature and location of evidence; the court's ability to expeditiously decide the issue; the respective court's familiarity with the facts of the case; and the court's ability to monitor the guardian's or conservator's conduct.²⁶⁷ While the list is lengthy, courts are familiar with applying this combination of substantively similar factors in child-custody cases, with the effect of curtailment, rather than prolonging, litigation.²⁶⁸

proceeding. Coleman et al., *supra* n. 253, at 73.

264. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 206(a). Additionally, Johns, Gottlich, and Carson state that

[a] court may decline to exercise jurisdiction if, on its own motion or upon motion of a party, it determines that it is an inconvenient forum [T]he court should consider whether another state is, or recently was, the home state of the vulnerable adult, if another state has a closer connection with the vulnerable adult, if there is substantial evidence relevant to the proceeding in another state, or if the parties have agreed on another forum.

Johns et al., *supra* n. 74, at 650–651.

265. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 205.

266. *Id.* at § 206.

267. *Id.*

268. *E.g.* Tex. Fam. Code Ann. § 152.207(b) (2002 & Supp. 2006). Texas's code relies on the following factors:

(1) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child; (2) length of time the child has resided outside this state; (3) the distance between the court in this state and the court in the state that would assume jurisdiction; (4) the relative financial circumstances of the parties; (5) any agreement of the parties as to which state should assume jurisdiction; (6) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child; (7) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and (8) the familiarity of the court of each state with the facts and issues in the pending litigation.

A court with jurisdiction may also decline to proceed at any time if it finds that the party requesting its jurisdiction has engaged in unjustifiable conduct.²⁶⁹ This provision would be available, for example, in those cases where there is evidence of moving the respondent, transferring the respondent's property for the purpose of creating jurisdiction, or forum shopping.²⁷⁰ If the court finds unjustifiable conduct, it has several options. It may exercise limited jurisdiction to ensure the safety of the respondent or the respondent's estate, or it may continue to exercise jurisdiction if the respondent and others involved in the proceeding acquiesce to jurisdiction.²⁷¹ The court may also assess all costs against the party who engaged in unjustifiable conduct.²⁷²

When a proceeding has been or is being commenced in more than one state, any court without either home-state or significant-contacts jurisdiction is directed to stay its proceedings and communicate with the other court.²⁷³ It must dismiss the proceeding unless the second court determines that it is indeed a more appropriate forum.²⁷⁴ However, these rules still reflect the existence of a "race to the courthouse" system, where the state in which the first filing is made has the primary responsibility to determine which court should proceed. However, the standards for establish-

Id.

269. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 207(a)(1). Johns, Gottlich, and Carson note that

[c]ourts would have the authority to decline jurisdiction over guardianship proceedings initiated by individuals whose conduct was adverse to the incapacitated individual [I]f a court determines that the petitioner has wrongfully taken the vulnerable adult from another state or has engaged in other conduct adverse to the vulnerable adult, it may refuse to hear the case.

Johns et al., *supra* n. 74, at 651

270. Johns et al., *supra* n. 74, at 651.

271. Unif. Adult Guardianship & Protective Procs. Jxn. Act §§ 207(a)(2)–(3)(A).

272. *Id.* at § 207(b).

273. *Id.* at § 209(2). Moreover, "[t]o avoid the detrimental effects of these transfers and interstate guardianship disputes, state courts must cooperate rather than compete." Johns et al., *supra* n. 74, at 649. As Johns, Gottlich, and Carson point out, it is imperative that a court know if another proceeding is pending in another jurisdiction. *Id.* The authors recommend that an adult-guardianship registry be established so that a court could determine whether a petition is pending or guardianship has been established in another state. *Id.* The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act does not establish a process by which courts can be assured that no other proceeding is pending. One remedy, short of a national registry, might be to require petitioners to state in the petition all pending proceedings or entered orders in any jurisdiction regarding the respondent.

274. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 209(2).

ing home-state jurisdiction can cause the determining court to decide to transfer the case into the second court based on the proposed incapacitated person's history and connections with each possible state.²⁷⁵

Article Three sets out the process of transferring an existing case from one jurisdiction to another.²⁷⁶ Transfer problems may arise even absent any other dispute. Even if all the parties agree that a guardianship or conservatorship should be moved to another state, few states have streamlined procedures for sending or receiving such a case. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act contemplates that the transfer proceedings would transpire in both the "old" and the "new" state before the adult has been moved to the new jurisdiction.²⁷⁷ The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act grants jurisdiction to the new state even though the new state would not ordinarily have jurisdiction over a person who is not yet present in the state and does not have significant contacts.²⁷⁸ The guardian or conservator must file two petitions—one with the court giving up the case²⁷⁹ and the other with the court to receive the case.²⁸⁰ The court giving up the case must grant provisional transfer to another court if the AIP is physically present, will be moving permanently to another state, or has significant connections with the other state.²⁸¹ After giving notice to the AIP and interested parties,²⁸² the court must hear any objections to the transfer²⁸³ and must be satisfied that the plans for care in the new state are reasonable and sufficient and that the new state will accept the transfer.²⁸⁴ Notice of intent to transfer must be personally served on the incapacitated or protected per-

275. Seal et al., *supra* n. 249, at 2.

276. See Unif. Adult Guardianship & Protective Procs. Jxn. Act art. III (describing the process for a petition to transfer to another jurisdiction and a petition to accept the proceeding that is transferred).

277. See generally *id.* at art. III, cmt. (establishing rules for both the "transferring" and the "receiving" states).

278. *Id.* at § 203.

279. *Id.* at § 301(a).

280. *Id.* at § 302(a).

281. *Id.* at § 301(d).

282. *Id.* at § 301(b).

283. *Id.* at § 301(c) (stating that the court must hold a hearing at the request of any interested party).

284. *Id.* at §§ 301(a)(3)–(4).

son and mailed to others entitled within the state to receive notice.²⁸⁵ The court holds a hearing on the transfer on its own motion or on the request of either the AIP or other interested person.²⁸⁶ If anyone objects to the transfer, the court then determines whether the transfer would be contrary to the AIP's interests.²⁸⁷ If the other state accepts the guardianship or conservatorship, the existing court will terminate its case.²⁸⁸

The guardian or conservator must also file a petition to accept transfer with the new state after the provisional order from the existing state has been entered.²⁸⁹ Notice is once again given to the AIP and to all those entitled to notice in both the existing and new states.²⁹⁰ The new state may hold another hearing if requested²⁹¹ and enter a provisional order accepting the case.²⁹² The new state then has exclusive and continuing jurisdiction until the case is terminated or transferred to another state.²⁹³ The new state is then directed to give full faith and credit to the orders of the transferring state so that the issues of capacity and appropriate guardian or conservatorship do not need to be relitigated.²⁹⁴ However, the new court should hold a hearing shortly after the entry of the final order of acceptance to determine if the case needs to be modified to conform to local law.²⁹⁵

Article Four addresses those circumstances where the adult remains in the state where the guardianship or conservatorship is located, but the guardian/conservator requires authority to act in another jurisdiction.²⁹⁶ The objective of Article Four is to facilitate the enforcement of guardianship and conservatorship orders in other states by requiring the foreign state to give full faith and credit to any existing order.²⁹⁷ This requirement enables the

285. *Id.* at § 301(b).

286. *Id.* at § 301(c).

287. *Id.* at § 301(d)(2).

288. *Id.* at § 303.

289. *Id.* at § 302(a).

290. *Id.* at § 302(b).

291. *Id.* at § 302(c).

292. *Id.* at § 302(d).

293. *Id.* at § 304.

294. *Id.*

295. *Id.* at § 304(b).

296. *See generally id.* at art. 4 (discussing the filing and recognition of guardianship orders from other states).

297. *Id.* at art. 4, cmt.

guardian or conservator to sell real property in another jurisdiction and enables the guardian to move the ward between states for temporary events such as specialized medical care.²⁹⁸ Once the foreign order has been registered, the guardian or conservator may exercise all powers authorized in the order, except as prohibited by the laws of the other state.²⁹⁹ For example, if the guardian has authority to make healthcare decisions in the home state, but the “other” state prohibits a guardian from consenting to the termination of life support for the ward without prior court authorization, the guardian’s powers would not be extended to allow such a decision without authorization in the new state.³⁰⁰

One of the hallmarks of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act is its emphasis on the importance of communication and cooperation between courts hearing matters involving the same individual.³⁰¹ Section 105 allows a court to request another court to hold an evidentiary hearing; or-

298. Seal et al., *supra* n. 249, at 3. Johns, Gottlich, and Carson also stress that “[a]ll decrees rendered by a state with jurisdiction . . . would be binding against all parties who received notice . . . and would be conclusive as to all issues of fact or law. Courts would be required to recognize and enforce out-of-state decrees from another state with jurisdiction.” Johns et al., *supra* n. 74, at 651.

299. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 403.

300. *Id.* at § 403.

301. *Id.* at § 105. Additionally, Johns, Gottlich, and Carson note that courts should promote and expand the exchange of information between states concerning the same incapacitated adult, so that the individual can receive required assistance . . . Any court in which a guardianship petition has been filed would be required to communicate with any other state court considering guardianship over the same individual to determine which is the appropriate forum to litigate the issues. Johns et al., *supra* n. 74, at 650. However, communication between courts can raise the ethical issue of ex parte communication. For example, the New Hampshire Code of Judicial Conduct states the following:

A judge shall accord to every person who has a legal interest in a proceeding, or that person’s lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that: (a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided: (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and (ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond. (b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge’s adjudicative responsibilities or with other judges . . . (d) A judge may initiate or consider any ex parte communications when authorized by law to do so.

N.H. Code of Jud. Conduct canon 3(B)(7), R. 38 (2006).

der the production of evidence, an evaluation or assessment, the appearance of a person, or release of medical, financial, or criminal information; and forward transcripts or evidence.³⁰² Section 106 provides for the taking of testimony by deposition, including by telephone or other electronic means.³⁰³ When possible simultaneous proceedings are on-going, the second-in-filing court has the responsibility to communicate with the first court in determining whether to stay or dismiss its proceedings.³⁰⁴ These procedures for inter-court communication are based on the procedures now in use in family law cases pursuant to the UCCJEA.³⁰⁵ While judges sitting in probate courts may not be accustomed to inter-court communication, they can look to the generally favorable experiences of their family court brethren for guidance. The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act carefully avoids mandating procedures, which may limit judicial discretion or modify state substantive law.³⁰⁶ The Committee has also considered the possible appropriateness of using interstate compacts to fill in the details on interstate cooperation.³⁰⁷

The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act also applies to the orders of foreign countries.³⁰⁸ This provision is in line with efforts by the international commu-

302. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 106(a). Additionally, Johns, Gottlich, and Carson note the following:

When an alleged incapacitated person has connections with several states, some pertinent evidence may be located in a state other than the one exercising jurisdiction over the guardianship proceeding. Cooperation among states in this regard will result in more complete investigations and will reduce the need for duplicative guardianship proceedings.

Johns et al., *supra* n. 74, at 651.

303. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 106.

304. *Id.* at § 209(2).

305. Natl. Conf. Commrs. on Unif. St. Ls., *Summary: Uniform Child Custody Jurisdiction and Enforcement Act*, http://www.nccusl.org/Update/uniformact_summaries/uniformacts-s-uccjaea.asp (accessed Apr. 9, 2007).

306. Seal et al., *supra* n. 249, at 2.

307. The National Center for Interstate Compacts is a component of the Council of State Governments. Council of St. Govts., *National Center of Interstate Compacts Mission Statement*, <http://www.csg.org/programs/ncic/mission.aspx> (accessed Apr. 11, 2007). The Center “is designed to be an information clearinghouse, a provider of training and technical assistance[,] and a primary facilitator in assisting states [to] review . . . and create new interstate compacts to solve multi-state problems.” *Id.* Daniel and Hannaford support the use of interstate compacts to address such issues as interstate court communication, transfer of cases, and property management for out-of-state wards. Daniel & Hannaford, *supra* n. 2, at 372–373.

308. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 103.

nity to facilitate the handling of guardianship cases that involve issues, property, or parties that cross international borders. The Hague Convention on the International Protection of Adults,³⁰⁹ although not yet in force, provides procedural guidelines on how courts can cooperate in sorting out jurisdiction and coordination in multinational cases.³¹⁰ Similar to the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the Hague Convention sets out protocols to be applied in determining whether a particular court may assume jurisdiction.³¹¹ In the international lexicon, the state in which the person is “habitually resident” has primary jurisdiction.³¹² Subsidiary jurisdiction may be appropriate if the person needing protection is a national, is physically present, or has property, or if there is an emergency.³¹³

VII. APPLICATION OF THE UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

Just as it is said that “all politics are local,” guardianship has been traditionally “strictly local.”³¹⁴ But in today’s mobile society, it is difficult to contain guardianship issues within one state’s boundaries. “Developing an expanded concept of guardianship that acknowledges the frequent relocation of wards, guardians, and protected property would promote easier access to the guardianship system and facilitate efficient and timely exchange of information across state lines.”³¹⁵

In its current draft stage, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act builds a solid foundation to bring some order out of the present confusion. As it moves through the NCCUSL approval process and is debated during the states’ adoption procedures, its utility will be subjected to close

309. *Convention on the International Protection of Adults* (final edition adopted Oct. 2, 1999), 39 I.L.M. 7.

310. *Id.* at ch. I, art. 1.

311. *See generally id.* at arts. 5–12 (discussing the determination of the appropriate state jurisdiction).

312. *Id.* at art. 6, ¶ 1. For an explanation of the meaning of “habitual residence,” see Nancy Coleman et al., *supra* n. 253, at 73–74 (discussing the different meanings of “habitual residence”).

313. *Convention on the International Protection of Adults, supra* n. 309, at art. 8, ¶ 2.

314. *Hoyt v. Sprague*, 103 U.S. 613, 631 (1880).

315. Daniel & Hannaford, *supra* n. 2, at 369.

examination. Just as the UCCJEA reversed the traditional approach of basing jurisdiction on the child's immediate location, the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act sets aside the long imbedded concepts of domicile, presence and in rem jurisdiction in favor of the "home state" approach.³¹⁶ This change may well be the most difficult to get used to, but the only alternative is continued conflict.

A. Initial Jurisdiction

Inevitably, practitioners will want to apply the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act procedures to existing cases to determine how things would be different and how it would change current practice. Part II of this Article begins with the rather simple fact pattern of Mrs. Edgewood, a "snowbird" with two homes and two daughters in different states.³¹⁷ The appropriate court to determine if Mrs. Edgewood needs a guardian is the court in the state where Mrs. Edgewood has been living for the immediately preceding six months.³¹⁸ For example, if Mrs. Edgewood has been living in her apartment in State F for the past half year, then State F, as home state, should hear the petition. The fact she has just returned to State G, where she owns property, would not change the most appropriate forum.³¹⁹ State G should decline jurisdiction if Daughter G files there even if the sale of the State G home to pay for care is the primary issue.³²⁰

Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the personal injury lawyer in *Uwazih*³²¹ would be given scant attention in his attempt to create diversity jurisdiction. If the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act had been in effect, Ms. Uwazih's

316. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 203(1).

317. *Supra* pt. II.

318. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 203(1) (awarding "home state" jurisdiction to the state where the ward has resided within the immediate six months before proceedings commenced).

319. *See id.* at § 203 (lacking any language concerning a ward's move to a different state containing the ward's property).

320. *See id.* (lacking any language concerning the payment of care or how such payment would alter appropriate jurisdiction).

321. *Supra* nn. 47–55 and accompanying text.

temporary presence in D.C. for medical treatment would not have created jurisdiction.³²² The attorney would have had to file for guardianship and conservatorship in Virginia where Ms. Uwazih had been living at the time of her accident.

The back-and-forth perambulations between the Maryland and Florida courts in *Mack* would have been cut short under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.³²³ When Mrs. Mack filed in Florida, the Florida court would have been informed of the Maryland proceeding as well as of the fact that Mr. Mack had never actually been in Florida.³²⁴ The guardian's presence before the court would not have made Florida an appropriate forum.³²⁵ Because of this contrast, the Florida court would not have jurisdiction to modify or terminate the Maryland order or to consider the substantive issue of removing Mr. Mack's feeding tube. Florida was not the patient's home state, and relevant evidence and witnesses concerning the patient would have been located in Maryland.³²⁶ Further, as required under current Florida law, the requisite multidisciplinary committee would not be able to examine the patient who was hospitalized in Maryland.³²⁷ Florida courts would not have been involved, leaving Maryland as the only jurisdiction to consider the substantive issues between Mack's father and wife on medical decisionmaking. The father, to dispute the wife's care plan, would have to had used available Maryland procedures to contest or appeal the wife's appointment.

As soon as being advised of the circumstances of the appearance of Mrs. Glasser in Texas, the Texas court, following the Uniform Adult Guardianship and Protective Proceedings Jurisdiction

322. See Unif. Adult Guardianship & Protective Procs. Jxn. Act § 203 (lacking any language indicating that presence in a state for medical treatment is enough to establish jurisdiction); *but see id.* at § 201 (authorizing a court to appoint an emergency guardian based on the ward's presence in the jurisdiction regardless of whether another state more appropriately has jurisdiction).

323. *Supra* nn. 65–76 and accompanying text.

324. See Unif. Adult Guardianship & Protective Procs. Jxn. Act § 105 (suggesting that courts of different states should communicate regarding guardianship proceedings).

325. See *id.* at § 203 (laying out the ways in which a court may exercise jurisdiction).

326. See *id.* at § 206(b) (explaining that if there are petitions pending in two states, the less appropriate jurisdiction must stay the proceedings, communicate with the more appropriate state, and ultimately dismiss the petition as long as it is shown that the other state is, in fact, more appropriate).

327. Fla. Stat. § 744.331(3) (2006).

Act, would have ruled that Texas was not the home state.³²⁸ Mrs. Glasser's temporary and sudden presence in Texas and the recent transfer of her property to Texas by the petitioner would also not have created jurisdiction over either her person or property.³²⁹ Texas would also have considered if it should have declined jurisdiction because of unjustifiable conduct by the petitioner.³³⁰ Assuming that it found unjustifiable conduct, Texas could assess costs against the petitioner.³³¹ Additionally, if the Texas court was convinced that Mrs. Glasser or her assets were at risk, it could have exercised limited emergency jurisdiction or have stayed the proceedings until they could be commenced in New Jersey or Florida.³³²

Even though it is not a home state, Texas would have been able to exercise non-emergency jurisdiction as a significant-connection state, only if Florida, where Mrs. Glasser had most recently lived,³³³ or New Jersey, where she had significant connections, had deferred to Texas as the most appropriate forum.³³⁴ These states would need to take into consideration the Section 203(c) factors,³³⁵ especially Mrs. Glasser's expressed desire to return to her home in New Jersey.³³⁶ Further, even if no proceeding had been filed in either New Jersey or Florida, Texas could not proceed if objection to its jurisdiction is filed.³³⁷ With the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act in place, the motion to stay Texas' jurisdiction in favor of New Jersey's jurisdiction could have been resolved in March 2005,

328. *Supra* nn. 89–97 and accompanying text.

329. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 203(1). Because Mrs. Glasser had not lived in Texas for the immediately preceding six months, and because Texas was not a “significant-connection” state, jurisdiction in Texas would have been inappropriate under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

330. *Id.* at § 207(a)(1).

331. *Id.* at § 207(b).

332. *Id.* at § 204(a)(1).

333. She may have been in Florida for less than the six months immediately preceding the filing of the Texas litigation. The *Glasser* record did not specifically address how long Mrs. Glasser had been in Florida or New Jersey, states where she split her time.

334. Unif. Adult Guardianship & Protective Procs. Jxn. Act § 206.

335. *Id.* at § 206(c).

336. *Id.* at § 206(c)(1).

337. *Id.* at § 203(2)(B).

rather than in March 2006, potentially saving Mrs. Glasser's estate several millions of dollars in attorneys' fees.

Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, Molly Orshansky's guardianship case was appropriately heard in D.C.³³⁸ Mrs. Orshansky had been a resident of D.C. for decades and the District was her home state.³³⁹ The niece would need to persuade the District Court to decline jurisdiction in favor of New York because Mrs. Orshansky's desire to eventually move to New York made New York a more appropriate forum.³⁴⁰ The D.C. court could also have exercised limited emergency jurisdiction to stabilize Mrs. Orshansky's medical condition and then dismissed or stayed the proceeding to allow the family to promptly begin proceedings in New York.³⁴¹

B. Interstate Recognition

Guardian of the estate and person Ms. Blum, appointed in State Z, needs to sell Mr. Appleby's property in State K and place him in a rehabilitative facility in the neighboring State of M.³⁴² The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act facilitates both of these transactions. Ms. Blum will send a letter to States K and M, requesting registration of her State Z order and enclose a certified copy of her State Z order, letters of appointment, and her bond.³⁴³ Her order will then become a foreign judgment, and she can then exercise all powers in States K and M that she had in State Z.³⁴⁴ States K and M will recognize her authority given in State Z as long as what she wants to do is not prohibited in States K and M.³⁴⁵ For example, if Ms. Blum had authority to sell property in State Z, she can sell Mr. Appleby's property in K as if she had been appointed in K. She can place Mr. Appleby in a facility in State M if she has the authority to do so in State Z.³⁴⁶ Issues of whether Mr. Appleby is

338. *Supra* nn. 98–106 and accompanying text.

339. *In re Orshansky*, 804 A.2d at 1080.

340. Unif. Adult Guardianship & Protective Procs. Jxn. Act §§ 203(2)(A), 206(a).

341. *Id.* at §§ 204(a)(1), 204(b).

342. *Supra* n. 108.

343. Unif. Adult Guardianship & Protective Procs. Jxn. Act §§ 401, 402.

344. *Id.* at § 402.

345. *Id.* at § 403.

346. *Id.*

incapacitated, whether Ms. Blum is the appropriate guardian, whether State Z provided Mr. Appleby with due process, or whether State Z considered limited guardians or least restrictive alternatives to facility placement cannot be relitigated in State Z.³⁴⁷

The Illinois guardians in *Prye* and *Dunn* were stymied by Missouri-specific procedures designed to protect patients from unwarranted or involuntary treatment.³⁴⁸ Underlying the procedural issue of who had the authority to seek mental health treatment in Missouri was a possible difference in state policy between Missouri and Illinois. The *Dunn* court appeared to be concerned that the Illinois substantive law regarding guardian-authorized ECT therapy did not meet Missouri's criteria.³⁴⁹ Similar concerns could be raised about another state's definition of incapacity or due process protections.³⁵⁰ On the other hand, one state could have specific requirements for a guardian to consent to voluntary or involuntary medical examination and treatment,³⁵¹ or to sell real property,³⁵² that are not observed in the guardian's original state. A New York court, for example, was reluctant to accept an Iowa court's determination of incapacity without holding its own inquiry.³⁵³ The Iowa court stated that "[t]he comity which we extend to the decrees of sister States does not justify an assumption that we may ignore our own statutory requirement in ascertaining the necessity for the appointment of a [guardian]."³⁵⁴ The Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act has states set aside such concerns regarding procedural and

347. *Id.*

348. *Supra* nn. 130–139 and accompanying text.

349. *In re Dunn*, 181 S.W.3d at 605.

350. According to Daniel & Hannaford,

[a] concern of many probate courts is that these reform efforts would be significantly undermined if a guardianship could be created in one state based on the incompetency determinations of a probate court in another state without having adequate assurance that the original probate court had observed basic due process protections.

Daniel & Hannaford, *supra* n. 2, at 365.

351. *See e.g.* Wis. Stat. § 54.25(2)(d)(2)(a) (requiring a guardian to make a good faith effort to discuss voluntary receipt of medication with the ward and that the ward does not protest).

352. *See e.g.* Fla. Stat. § 744.441(12) (authorizing a conservator to sell, mortgage, or lease property associated with the estate only after obtaining a specific approval to do so).

353. *See In re Kassler*, 19 N.Y.S.2d 266, 270–272 (Sup. Ct. Queens Co. 1940) (deciding that determinations of incapacity should not be permanent or universal).

354. *Id.* at 272.

substantive distinctions in favor of giving effect to the Full Faith and Credit Clause.³⁵⁵ Some reassurance can be based on the significant reforms enacted in almost all states over the past decade.³⁵⁶

C. Interstate Transfer

Mrs. Grant, under guardianship in State W, can get better care in State Z. Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, her guardian, Mr. Johnson, may transfer the State W case to State Z by filing a petition for transfer in State Z.³⁵⁷ He may personally serve his ward and mail notice to all persons entitled to notice in State Z.³⁵⁸ Before granting provisional transfer, State W must be satisfied of the following: Mrs. Grant is permanently moving to State Z;³⁵⁹ that no one has objected to the transfer or the objectants have not established that transfer would be contrary to Mrs. Grant's best interest;³⁶⁰ that Mr. Johnson's plan for her care in State Z is reasonable and sufficient or his estate-management plan is adequate;³⁶¹ and that State Z will accept the transfer.³⁶² State W can hold a hearing on its own motion, on Mrs. Grant's request, or if any interested person so requests.³⁶³ Once State Z enters an order accepting the transfer, State W will terminate the proceeding.³⁶⁴

Mr. Johnson must also petition State Z to accept the transfer.³⁶⁵ In that state, he must again serve Mrs. Grant and mail no-

355. See Unif. Adult Guardianship Protective Proc. Jxn. Act § 403 (requiring courts to recognize and enforce registered orders that were issued in another state).

356. Erica Wood, *History of Guardian*, in Mary Joy Quinn, *Guardianships of Adults: Achieving Justice, Autonomy, and Safety* 31–44 (Springer Publ. Co. 2005).

357. Unif. Adult Guardianship Protective Proc. Jxn. Act § 301(a). This process would be more efficient and expeditious for Jane E.P.'s family than the newly adopted Wisconsin procedure. *Supra* nn. 169–178 and accompanying text.

358. Unif. Adult Guardianship Protective Proc. Jxn. Act § 301(b).

359. Section 301(d)(1) uses the word “permanently” move. Absolute permanence to never move again may be difficult to prove. The objective is to provide for transfer when there is intent to remain for more than a transient period.

360. Unif. Adult Guardianship Protective Proc. Jxn. Act § 301(d)(2).

361. See *id.* at § 301(d)(3) (stating the court granting the transfer must be satisfied that the guardians plans for the person are reasonable and sufficient or that adequate arrangements for the estate will be made).

362. *Id.* at § 301(d)(4).

363. *Id.* at § 301(c).

364. *Id.* at § 303.

365. *Id.* at § 302(a).

tice to all persons entitled to notice in both State W and Z.³⁶⁶ State Z may again hold a hearing,³⁶⁷ and it will accept the transfer unless objectants establish that the transfer is not in Mrs. Grant's best interest.³⁶⁸ The order is only provisional until State W enters its final order.³⁶⁹ Once the transfer is approved, State Z will give full faith and credit to State W's order.³⁷⁰ State Z can hold later hearings to ensure that the guardianship conforms to its laws and procedures.³⁷¹

This process is not necessarily simple or detail-free, but it does remove the need to relitigate issues of capacity, extent of authority, or selection of guardian. It also grants State Z jurisdiction over Mrs. Grant even before she locates there and also over her property regardless of where it may be located.³⁷² The reason for the transfer, such as to obtain more favorable Medicaid eligibility or substantive medical or mental treatment laws, will only be at issue if an interested party objects that the transfer was not in the ward's best interests.

In the case of Mrs. Seyse,³⁷³ under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the New Jersey daughter would have to had petitioned for transfer in the New Jersey court to move her to Connecticut.³⁷⁴ The other daughter, receiving notice before the move and transfer, would have the opportunity in the New Jersey proceeding to argue that moving her mother and transferring the case to Connecticut would not be in her mother's best interests.³⁷⁵ Connecticut proceedings would not be necessary until the New Jersey court was satisfied that the move was appropriate, avoiding the expense of

366. *Id.* at § 302(b).

367. *Id.* at § 302(c) (allowing the court to hold a hearing on a transfer petition based on its own motion or upon the request of an interested person).

368. *Id.* at § 302(d).

369. *Id.*

370. *See id.* at § 302(e) (requiring the court that approves a petition to give full faith and credit to the order from the transferring state).

371. *See id.* at § 304(b) (establishing that within ninety days the accepting state must hold a hearing to determine whether the guardianship or conservatorship must be modified to conform to its laws).

372. *Id.* at § 204(a)(2).

373. *Supra* nn. 224–231 and accompanying text.

374. Unif. Adult Guardianship Protective Proc. Jxn. Act § 301(a).

375. *Id.* at § 301(c).

litigation in both courts.³⁷⁶ Mrs. Seyse would remain in New Jersey without being trundled from state to state.³⁷⁷ The important fact that Mrs. Seyse's move to Connecticut was prompted by her discharge from her New Jersey facility for disruptive behavior points to the necessity of the courts to act expeditiously in deciding transfer matters. The transfer to Connecticut also allows that court to be in a better position to provide on-going monitoring of Mrs. Seyse's care in Connecticut.

Margaret Enos' daughter, dissatisfied with the care her mother was receiving in Florida from a Florida guardian, would need to litigate her concerns in the Florida court.³⁷⁸ Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, however, because the daughter was not the guardian, she would not be able to petition for transfer.³⁷⁹ After proving to the Florida court that she should be appointed as successor guardian, Ms. Enos would then be able to initiate a transfer petition in Florida and an acceptance petition in Massachusetts.³⁸⁰

One issue that may still need to be addressed in conforming amendments is how a court will know whether a guardianship order already exists or is pending in another jurisdiction. Some states now require petitioners to disclose whether other orders exist or petitions are pending.³⁸¹ Instituting this procedural requirement in every state would alert courts to the possibility of jurisdictional disputes.³⁸²

The question of how and when to modify a guardianship order, and who can modify it, was among the first asked at a discussion of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act held by the Guardianship/Capacity Special

376. The drafting committee may need to give additional thought to what issues should be raised in both hearings and whether the objections raised in the transfer hearing can or should be relitigated at the acceptance hearing.

377. See Unif. Adult Guardianship Protective Proc. Jxn. Act §§ 301, 302 (allowing the various stages of a petition for a proceedings transfer to be processed in both the transferring and accepting states without the incapacitated person being physically present).

378. *Supra* nn. 232–233 and accompanying text.

379. Unif. Adult Guardianship Protective Proc. Jxn. Act § 301(a) (restricting the ability to petition the court to transfer to guardians or conservators).

380. *Id.*

381. *E.g.* Ga. Code Ann. § 294-10; Ind. Code 29-3-5-1(a); Kan. Stat. Ann. § 59-3009; Mont. Code Ann. § 72-5-319(1); N.M. Stat. Ann. § 45-5-303; S.D. Codified Laws Ann. § 29A-5-305; Tex. Prob. Code Ann. § 682; Wash. Rev. Code § 11.88.030(1).

382. Daniel & Hannaford, *supra* n. 2, at 362.

Interest Group of the National Academy of Elder Law Attorneys in April 2006.³⁸³ A. Frank Johns, Vicki Gottlich, and Marlis Carson, who urged the adoption of a uniform jurisdiction act as early as 1992, recommended that “[c]ourts may modify out-of-state decrees if the state that originally issued the decree no longer has jurisdiction or has declined to exercise jurisdiction, and if the second state has jurisdiction.”³⁸⁴ Under the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, the appointing court retains exclusive continuing jurisdiction.³⁸⁵

Another issue left unaddressed by the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act is whether someone other than the guardian should be allowed to petition for transfer. Section 301(a) restricts transfer petitions to the guardian or conservator.³⁸⁶ However, if the appointed guardian does not wish to transfer, should another interested person be allowed to initiate the transfer? Would such a provision invite meddling by a disappointed participant in a prior proceeding or close the door to valid issues being raised when the guardian is not performing adequately? A recent Missouri case illustrates the problem. Bryan Pulley was involved in a serious automobile accident and suffered permanent brain damage.³⁸⁷ His mother, Mrs. Sandgren, was appointed his guardian in Michigan.³⁸⁸ She later sent Bryan to live with his father in Missouri where he had been living for almost two years before the accident.³⁸⁹ The mother became disengaged from her son’s care.³⁹⁰ The father petitioned the Missouri court to register the Michigan guardianship order and to modify that order to appoint him as guardian.³⁹¹ The mother participated in the Missouri proceeding but was removed as guardian

383. Natl. Acad. Elder L. Attys. Inst., Washington, D.C., (May 2006) (Audiotape on file with Author).

384. Johns et al., *supra* n. 74, at 651; see also Vicki Gottlich, *Finders, Keepers, Losers, Weepers: Conflict of Laws in Adult Guardianship Cases*, 23 Clearinghouse Rev. 1415 (Mar. 1990) (describing the problems associated with dual jurisdiction and states’ refusal to give full faith and credit to foreign decisions).

385. Unif. Adult Guardianship Protective Procs. Jxn. Act § 204.

386. *Id.* at § 301(a).

387. *Pulley v. Sandgren*, 197 S.W.3d 162, 164 (Mo. App. 2006).

388. *Id.*

389. *Id.*

390. *Id.*

391. *Id.*

in favor of the father.³⁹² On appeal in Missouri, she claimed that Missouri erred in accepting transfer of the case because Michigan had no subject-matter jurisdiction to transfer the case.³⁹³ Michigan has a change of venue provision, but no specific provision for out-of-state transfer.³⁹⁴ The Missouri court found that Missouri had authority over all guardianship matters and thus could accept the transfer and that the specific trial court had venue because Brian had been living in that county for four years.³⁹⁵ Under Missouri law, its courts were obliged to presume that the Michigan court had jurisdiction and to give full faith and credit to the Michigan proceeding.³⁹⁶ If Mrs. Sandgren had wished to challenge the jurisdiction and decision of the Michigan court to transfer, she would have needed to appeal in Michigan. The Missouri court also found sufficient evidence to remove Mrs. Sandgren as Bryan's guardian because of her abdication of all responsibilities to the father.³⁹⁷

VIII. CONCLUSION

While some answers exist to the questions presented by mobile wards and guardians, none of those answers are simple and all are state-specific. Interstate jurisdiction, recognition, and transfer issues are slowly moving down the road to resolution, but many barriers remain in the path of courts, guardians, and their wards.

There is little debate that the current state laws are silent, incomplete, or contradictory in assisting courts and litigants resolve many of the issues created by our mobile society. However, constructing the framework that will justly resolve every interstate question will be difficult. Any uniform law must be designed to limit forum shopping, while at the same time identifying the forum best suited to allow guardians and courts to carry out their responsibilities to protect the interests of incapacitated persons. A

392. *Id.*

393. *Id.* at 165.

394. *Id.*

395. *Id.*

396. *Id.* at 165–166 (citing *In re Pyre*, 169 S.W.3d at 116).

397. Compare *id.* at 166 (approving the removal of a guardian appointed in Michigan), with *In re Guardianship of DeCaigny*, 1994 WL 25501 at *1 (disapproving the removal of guardians appointed in New Mexico).

uniform law must also account for due process for the ward and other interested parties while conserving the resources of both the court and the ward. It must also enable courts to keep track of the care being provided to their wards—a nearly impossible task if either the ward or guardian is not located within the state.

If the concept of guardianship is to continue to be a useful one for caring for the welfare of incapacitated persons and their property, it cannot continue to be viewed as a static, stationary, and state-specific creation. Rather, it needs to be viewed as a legal relationship that, once created, enjoys a presumption of legitimacy that will permit it to be transferred easily from state to state without losing its essential characteristics—namely, determination of incompetency, the identity of the guardian, and the scope of the guardian's rights and responsibilities vis-à-vis the ward States need an avenue for establishing interstate guardianships without the expense or relitigating the competency of a ward or potential ward, facilitating speedy decisions and case processing while protecting the interests of the ward and his or her assets.³⁹⁸

398. Daniel & Hannaford, *supra* n. 2, at 369–370.