

By Kerry R. Peck

## Major Probate Law Change in Illinois

# Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act

**T**HE UNIFORM ADULT Guardianship and Protective Proceedings Jurisdiction Act (“UAGPPJA”) contains dramatic changes to the practice of law in the guardianship arena. The UAGPPJA, enrolled as Public Act 096-0177, addresses issues affecting multiple jurisdiction (state) transfer and out of state guardianship recognition.

The applicability of this new provision of the Probate Act is designed to eliminate multi-state jurisdictional issues in “Granny snatching” cases. Typically, the fact pattern arises when an Illinois older adult resident visits a child in another state (Washington) for vacation, or a child comes to Illinois and kidnaps Mom and takes her to the home (Washington) of the visiting children in a state other than Illinois. Frequently, the misconduct is designed to financially exploit the parent and deprive the court of jurisdiction in the parent’s home state – Illinois. Further such conduct is intended to take the parent out of the reach of an Illinois guardianship. If the receiving state has adopted the UAGPPJA, counsel can rely upon the new Illinois statutes. Alternatively,

the new form is anticipated to denote whether or not Illinois has special jurisdiction (which means not home state and not significant-connection jurisdiction) defined in Section 204 of the UAGPPJA.

The new relevant terms expected to be incorporated in revised Cook County Probate forms are as follows:

- “Home state” means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing



of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for a least six consecutive months ending within the six months prior to the filing of the petition. See Article 2, Section 201(a)(2).

- “Significant-connection state” means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. See Article 2, Section 201(a)(3).
- “Emergency” means a circumstance that likely will result in substantial harm to a respondent’s health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent’s behalf. See Article 2, Section 201(a)(1).

**New Form**

The Cook County Probate Judiciary in conjunction with the Chicago Bar Association Rules and Forms Committee is drafting a new petition for the appointment of guardian for disabled person, Form CCP 0200A. The new form is anticipated to specifically ask if Illinois is the home state and if not, what state is the home state. Under Article 2, Section 201(b)(1-4), the court in “determining...whether a respondent has a significant connection with a particular state,” must consider (i) the location of respondent’s family and other persons required to be notified of the guardianship or protective proceeding; (ii) the length of time respondent at any time was physically present in the state and the duration of any absence; (iii) the location of respondent’s property; and (iv) the extent to which respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver’s license, social relationship, and receipt of services.

As a clear benefit to probate practitioners, the UAGPPJA also includes new provisions for taking testimony in another state, section 106(a-c). These important changes are denoted as follows:

- (a) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be

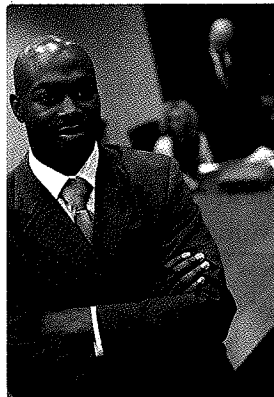
offered by deposition or other means allowable in Illinois for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms on which the testimony is to be taken.

- (b) In a guardianship or protective proceeding, an Illinois court may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. The Illinois court is to cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.
- (c) Documentary evidence transmitted from another state to a court of Illinois by technological means that do not produce an original writing may not be excluded from evidence on an objective based on the best evidence rule.

This will eliminate the necessity of forcing counsel to retain local counsel in another state and issue subpoenas to take the depositions of out-of-state witnesses.

**Proper Venue**

We live in a highly mobile society in which older adults travel with ease from state to state, maybe snowbirds who often own real estate in multiple jurisdictions. Where is the proper venue for guardianship when an Illinois resident who owns a condo on Lake Shore Drive with children living in Illinois suffers a stroke while staying at a condo in Florida for the winter? The Illinois resident requires invasive medical treatment in Florida and has not executed an advanced directive. This is only one example of multi-state disputes that the UAGPPJA may resolve. In addition the new statute includes Section 105, “Cooperation between Courts,” which for the first time formalizes the working relationship between the judiciary in multiple states and denotes the action which may be requested by an Illinois judge of the



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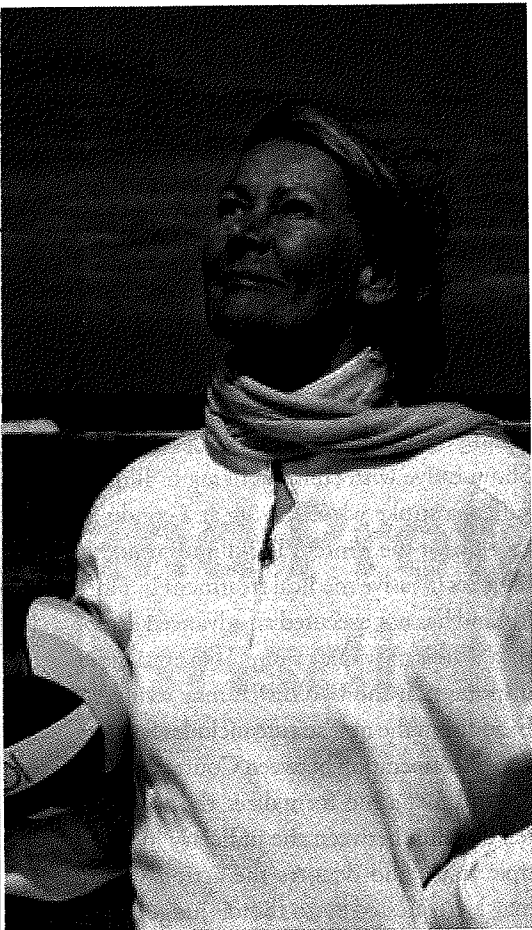
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judiciary in another state. This provision should allow direct judicial communication and hopefully remove the obstacles to a prompt and friendly reception by the other state's judiciary. See Article 1, Section 105(a). Among these provisions are hold an evidentiary hearing; ordering a person to produce evidence or give testimony pursuant to procedures of the state; ordering an evaluation or assessment be made of respondent; and ordering any appropriate investigation of a person involved in a proceeding; and forwarding to Illinois a certified copy of the transcript or other record of a hearing or any other proceeding, any evidence otherwise produced, and any evaluation or assessment prepared in compliance with an order.

Section 105(b) vests Illinois courts with limited jurisdiction to grant the request made to the Illinois court by another state for the limited purpose of granting the request or making reasonable efforts to comply with the request. For example, perhaps the Florida court would request

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that the Cook County Probate Division hear the testimony of an Illinois psychiatrist in the snowbird example denoted above. If the Illinois resident stricken with an illness in Florida while visiting had been treated for a mental illness in Illinois, the older adult's psychiatrist's testimony would be very important. Under the new statute, the Florida court could request that the Illinois court hold an evidentiary hearing under Section 105. Perhaps a simpler method of securing the testimony would be to authorize testimony under Section 106, Taking testimony in another state. That provision which specifically authorizes deposition testimony allows out-of-state witnesses to appear by deposition. (Please note, Florida has not yet adopted the UAGPPJA.)

The UAGPPJA Section 206 entitled "Appropriate Forum" delineates the elements for analysis of determining if a state is the appropriate venue for the proposed

guardianship. (See Section 206 (c) after a court declines jurisdiction in 206(a) or (b).)

The new guardianship laws should reduce and prevent elder abuse, financial exploitation and afford older adults the protection they deserve from our court system in approximately twenty states that have adopted the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. The UAGPPJA should also assist counsel in reducing the battles over jurisdictional issues in multi-state guardianships where the act has been adopted by both states. The uniform law commissioners are continuing to seek passage of the UAGPPJA in the remaining states that have not enacted the provision. ■

*Kerry R. Peck, Past President of the Chicago Bar Association, is managing partner of Peck Bloom, LLC and serves on the Editorial Board of the CBA Record.*