



NEW JERSEY STATE BAR ASSOCIATION

EVELYN PADIN, PRESIDENT
Law Office of Evelyn Padin
286 First Street
Jersey City, NJ 07302
201-963-8822 • FAX: 201-963-8874
evelyn@lawjcnj.com

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Via Regular Mail

Samuel M. Silver, Deputy Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Floor
PO Box 47016
Newark, New Jersey 07102

Dear Mr. Silver:

Please accept this letter as a response to your request for comment on the proposed New Jersey Guardianship Statutes and portions of Title 3B. The New Jersey State Bar Association applauds the Commission's updating and replacement of terms such as "incapacitated person" and "ward" with person-first language. However, the attempt to consolidate the numerous definition sections into one comprehensive statutory section and the new proposed laws based on the Uniform Guardianship, Conservatorship and Other Protective Arrangements Act (UGCOPAA) does not accomplish what was intended and may be too fundamental a change for New Jersey's most vulnerable public.

In 1997, the Uniform Law Commission (ULC) revised the Uniform Guardianship and Protective Proceedings Act (UGPPA). Only seven states passed the Act in its entirety. In or about 1998, the Elder Law Section of the New Jersey State Bar Association (NJSBA) formed a Guardianship Law Reform Committee to study the UGPPA and make recommendations regarding its possible adoption in New Jersey. Representatives from affiliated groups such as the NJSBA's Real Property, Trust & Estate Section, New Jersey Protection & Advocacy and the New Jersey Office of the Public Guardian joined the Committee.

Following a thorough study of the UGPPA, the Committee concluded that adoption of the UGPPA in New Jersey would require a major overhaul of New Jersey's guardianship procedures which the Committee believed were superior to those set forth in UGPPA in protecting the rights of alleged incapacitated people. For example, adoption of the UGPPA would result in the elimination of mandatory court-appointed attorneys for such individuals. The Committee, however, recognized that New Jersey's guardianship statutes had not been revised for many years and needed to be updated. As a result, the Committee proposed revisions to some of its guardianship statutes and proposed several new statutes. Specifically, the revised statutes proposed by the Committee were designed to:

- Promote consideration of limited guardianship in all guardianship proceedings and autonomy for mentally incapacitated individuals whenever possible;
- Underscore the need for guardians and the courts to safeguard the ward's health, safety and welfare;
- Require the court to focus on whether the ward can retain decision-making powers;
- Expand the protective arrangement statute currently limited to property issues to protect alleged mentally incapacitated persons, prior to adjudication of mental incapacity, who face a substantial risk of physical harm due to circumstances beyond their control;
- Expand the protective arrangement statute to include relocation of alleged mentally incapacitated persons for the purpose of protection or obtaining medical services;
- Require the court to set forth findings regarding decisions the ward can make and decisions requiring assistance of guardian;
- Limit a guardian's powers to those necessary to meet the requirements for the mentally incapacitated person's health, safety, education and self-care or to manage the ward's property or finances or both;
- Require the court to take into account the least restrictive form of intervention, as well as the ward's preferences, limitations and understanding of likely harm as a result of those limitations;
- Unless otherwise stated in guardianship judgment, allow the ward to execute an advance directive, last will and testament, make gifts, establish a trust, engage in asset or tax planning and vote;
- Require the court to consider surrogate decision-makers chosen by the ward prior to adjudication of mental incapacitation, such as an attorney-in-fact under a general durable power of attorney or agent designated in a health care proxy;
- Expand items required to be contained in an annual report regarding ward;
- Codify the court's power to engage in estate, tax and public benefits planning on behalf of the ward;
- Clarify that a guardian is not liable to third parties for acts of the ward solely because of the guardianship-ward relationship; and
- Clarify that guardians are not liable for injury to the ward resulting from a third person's wrongful conduct in providing medical or other care, treatment or service for

the ward unless the guardian failed to exercise reasonable care in choosing the provider.

The NJSBA, in conjunction with the representatives of the other groups that participated in the Committee, located legislative sponsors and testified in support of the passage of the new statutory scheme. The new statutes finally were adopted in 2005 and became effective on January 11, 2006.

Today in 2019, our position on the UGCOPAA remains the same as it was before the enactment of the amended guardianship statutes in 2005. New Jersey's system is superior to that proposed by the UGCOPAA and does not require major substantive changes merely because of the creation of a new Uniform Law.

I thank you for the opportunity to review and comment on these proposed statutes.

Very truly yours,



Evelyn Padin, Esq.
President

Encl.

cc: Kimberly A. Yonta, Esq., President-Elect
Angela Scheck, Executive Director, NJSBA
Ben Menasha, Esq., Chair NJSBA Elder and Disability Law Section