

ELDER LAW

Transfer of a Foreign Guardianship To New York

Circumstances in life are constantly changing, and it may be in the best interest of a person subject to a guardianship in another jurisdiction to have a New York court accept the transfer of the out-of-state guardianship. Such a transfer is governed by Article 83.33 of the Mental Hygiene Law, effective April 21, 2014.

UAGPPJA

The need for the statute is most aptly stated in the legislative justification that accompanied the bill:

"Due to increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Adult guardianship jurisdiction issues commonly arise in situations involving snow-birds, transferred/long-distance care giving arrangements, interstate health markets, wandering, and even the occasional incidence of elderly kidnapping. The process of appointing a guardian is handled in state courts.

Often, jurisdiction in adult guardianship cases is complicated because multiple states, each with its own guardianship system, may have an interest in the case. Consequently, it may be unclear which state court has jurisdiction to decide the guardianship issue. The U.S. has 55 different adult guardianship systems, and the only data available is from 1987, which estimates 400,000 adults in the U.S. have a court appointed guardian. Even though no current data exists, demographic trends suggest that today this number probably is much higher. In response to this common jurisdictional confusion, the Uniform Law Commission developed the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA). The legislation establishes a uniform set of rules for determining jurisdiction, and thus, simplifies the process for determining jurisdiction between

By
**Daniel G.
Fish**



multiple states in adult guardianship cases. It also establishes a framework that allows state court judges in different states to communicate with each other about adult guardianship cases. This legislation would provide a significant savings to the New York State court system by avoiding costly duplicative guardianship cases."

Prior to the enactment of MHL Section 83.33, a guardian appointed in another state (the originating state) seeking to transfer the incapacitated person to New York, was

Pursuant to MHL Section 83.05 "A court of this state may treat a foreign country as if it were a state . . ." so there are international implications to this statute,

required to file an initial petition under MHL Article 81 or Article 17A of the Surrogate's Court Procedure Act in New York, as though no proceeding had ever been filed in the originating state. The goal of UAGPPJA was to streamline the process for the benefit of the incapacitated person.

Steps in the Process

Under MHL Section 83.33, the guardian in the originating state must first obtain an order from the originating state court, provisionally authorizing the transfer of the case to New York.

Once provisional order from the originating state is issued, a petition can be filed in a New York court for a provisional order accepting the provisional order from the originating state requesting the transfer of the existing

guardianship to New York. Notice will have to be given to all those entitled to notice as if the petition were one for an ordinary Article 81 petition or Article 17A petition. The New York court may then hold a hearing on the petition to transfer the guardianship. The provisional order granting the petition shall be issued unless the transfer is contrary to the interest of the incapacitated person, or the originating state guardian is ineligible to serve in New York.

If the New York court grants the provisional petition, that order will be taken back to the originating state court with a request that the originating state court issue a final order terminating the guardianship in the originating state and consenting to the transfer of the case to New York.

Upon receipt of the final originating state court order, a motion would be made to have the New York court issue a final order appointing the originating state guardian the guardian in this state.

Application of B.A.M.W.

Matter of the Application of B.A.M.W., 988 N.Y.S.2d 456 (Sup. Ct. Dutchess Cty., 2014) was filed almost immediately after the effective date of MHL Section 83.33 and required three filings before an order was granted to accept the transfer of a guardianship from Texas to New York. The mother had been appointed the guardian of her developmentally disabled child by a Texas court. The mother moved to New York and wanted the New York court to recognize the Texas guardianship order.

The initial petition was dismissed without prejudice, with leave to refile due to the failure to attach a certified copy of the Texas order and the failure to serve the petition upon the proper parties.

When the case was refiled, 989 N.Y.S.2d 603, (Sup. Ct. Dutchess Cty., 2014) the petition was denied again as a certified copy of the Texas order appointing the guardian was attached, but no

Transfer

«Continued from page 3»

provisional order of transfer from the Texas court was attached. Due to the fact that this was an emerging area of law, the court attached a form for the provisional order of transfer from the originating state.

"Name of the Court of Origin"

_____ X

In the Matter of :

: File/Index No.: _____

_____ ;

: _____

An Incapacitated Person. : _____ X

Provisional Order to Transfer Guardianship

On this _____ day of _____, the Court having reviewed the petition to transfer guardianship from the State of _____ to the State of New York, and notice having been provided to all required parties without any objection being heard or following a hearing on the petition to transfer held on _____

IT IS HEREBY ORDERED that:

- The guardianship of the above named incapacitated person is hereby provisionally transferred to the state of New York.
- The petitioner is directed to file a petition for guardianship or transfer of guardianship in the state of New York within 20 days from the date of this provisional order.
- Once a court in the state of

New York grants a provisional order accepting jurisdiction of the above guardianship, the petitioner is directed to file a copy of that order with this court.

- After all of the statutory requirements are satisfied, the court may issue a final order confirming the transfer and terminating the guardianship in the state of _____

The case was refiled again, 18 N.Y.S.3d 577, (Sup. Ct. Dutchess Cty., 2015), and the petition was granted and the court as a courtesy included a sample of a final order confirming transfer and terminating the case in the home state.

"Name of the Court of Origin"

_____ X

In the Matter of :

: File/Index No.: _____

_____ ;

: _____

An Incapacitated Person. : _____ X

Final Order Confirming Transfer and

Terminating the Guardianship

- #### I. Findings
1. A Petition to Transfer Guardianship to the State of New York has been filed.
 2. A Provisional Order Approving Transfer was entered.
 3. A Provisional Order Accepting Transfer of Guardianship has been entered in New York.
 4. The guardian herein has provided the necessary documents to terminate the guardianship to this Court.

II. Order
The guardianship of the above named incapacitated person is hereby transferred to the State of New York.

All statutory requirements have been satisfied and this Court terminates the guardianship in the State of _____.

Dated: _____

Justice/Judge/Magistrate

This matter will be placed on this Court's calendar on _____ for the receipt of a final order confirming transfer and terminating the guardianship of the _____ Court in _____ County, _____ state.

Conclusion

The procedures set out in MHL Section 81.33 require close coordination between counsel in the originating state and New York state, as four separate orders (two provisional and two final) are necessary. Pursuant to MHL Section 83.05 "A court of this state may treat a foreign country as if it were a state ..." so there are international implications to this statute. The bar and the bench will need to be fully familiar with the steps under MHL Article 81.33 to best serve this vulnerable population.

Daily columns in the Law Journal report developments in laws affecting medical malpractice, immigration, equal employment opportunity, pensions, personal-injury claims, communications and many other areas.

DID YOU BORROW THIS?

Have your own copy of the New York Law Journal delivered directly to your home or office. For subscriptions call 1-877-256-2472.