

# Commentary on Issues

## 1. Global Perspective: A Paradigm Shift on Legal Capacity

- a. U.N. Convention on the Rights of Persons with Disabilities (CRPD)
- b. World Congress on Adult Guardianships
- c. Potential Impact of CRPD on California Probate Conservatorships

California has been a leader and innovator in protecting the rights of minorities and vulnerable populations. But regarding the rights of seniors and people with disabilities who have cognitive challenges that cause others to question their capacity to make decisions and direct their own destiny, this is not so. There is an international movement for reform that California judges, legislators, and executive branch officials are ignoring. The workgroup will explore changes mandated by the CRPD, how other nations are implementing them, and how California is ignoring them.

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## 2. Focus on California Probate Conservatorships

- a. Constitutional and Statutory Protections
  - 1) Rights Under Federal Law
  - 2) Rights Under State Law

Participants in probate conservatorship proceedings – judges, attorneys, capacity assessment professionals, court personnel, etc – are acting as though state and federal constitutional and civil rights protections do not apply to these proceedings. But they do. Workgroup members will explore what these protections are and how they apply to all aspects of the conservatorship process.

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- b. Rights and Procedures Under Probate Code
  - presumption of capacity – assessment of capacity by various individuals
  - assessment of various types of decision-making
  - evaluation of the available and feasible less restrictive alternatives
  - burden of proof to restrict rights: clear and convincing evidence
  - adjudication process to decide capacity issues and restrictions of rights
  - challenging invalid capacity assessments: appeals in individual cases
  - challenging improper assessment practices: administrative complaints

Workgroup members will review the steps in conservatorship proceedings, what role each participant plays, and how they should be performing their functions if they complied with current laws.

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- c. Identified Deficiencies
- d. Recommended Changes

Workgroup members will identify deficiencies in current policies and practices during each phase of conservatorship proceedings, and by each participant in the process, and will recommend changes in state laws, court rules, and administrative regulations. The workgroup will also suggest ways that California officials can embrace innovations by learning from the experiences of those in other nations who comply with the CRPD as they assist and protect seniors and adults with disabilities.