Issues to be Explored by Workgroup

1. Global Perspective: A Paradigm Shift on Legal Capacity
   a. U.N. Convention on the Rights of Persons with Disabilities (CRPD)
      – Article 12 (equal recognition before the law)
      – Article 13 (access to justice) – Article 14 (liberty)
      – Article 16 (freedom from abuse)
   b. World Congress on Adult Guardianships
      – reports from various nations on status of compliance with CRPD
   c. Potential Impact of CRPD on California Probate Conservatorships

2. Focus on California Probate Conservatorships
   a. Constitutional and Statutory Protections
      1) Rights Under Federal Law
         – United States Constitution – Fourteenth Amendment – Due Process
         – Rights of People with Disabilities (ADA, and Section 504 of Rehabilitation Act)
      2) Rights under State Law
         – California Constitution (privacy, due process, equal protection)
         – Government Code Sec. 11135 (disability rights)
         – Welfare and Institutions Code (Lanterman rights)
   b. Rights and Procedures under Probate Code
      – presumption of capacity
      – assessment of capacity by various individuals
        (petitioner, ADA coordinator, retained/appointed lawyer, court investigator,
        medical or mental health practitioner, professional fiduciary, regional centers)
      – assessment of various types of decision-making
        (medical, finances, residence, education, social, sexual, procreation,
        marriage, voting, testamentary)
      – evaluation of the available and feasible less restrictive alternatives
        (powers of attorney, trusts, supported decision-making arrangements)
      – 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
   c. Identified Deficiencies in Current Policies and Practices
   d. Recommended Changes in Capacity Laws and Assessment Practices