

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