Getting 50 Clocks to Strike as One

By John Minnis, Detroit Legal News

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In 1818, reflecting on the American Revolution, John Adams wrote: "Thirteen clocks were made to strike together — a perfection of mechanism, which no artist had ever before effected."

He would have been even more impressed had he been alive 80 years later to witness the formation of the National Conference of Commissioners on Uniform State Laws in 1898. Over its 118 years, the Uniform Law Commission, as it is now known, would make 50 clocks strike as one — as well as the District of Columbia, the Commonwealth of Puerto Rico and the U.S. Virgin Islands.

"It is an interesting organization," said Tom Buiteweg, a partner in Hudson Cook’s Ann Arbor office who serves on the ULC as a Michigan commissioner. "It's national. Every state has commissioners who are sent to national conferences to write uniform policy choices. We push for uniformity among state laws that could have been federal laws. In that sense, it is a states' rights organization."

The Michigan Commission on Uniform State Laws consists of eight members: two appointed by the Senate Majority Leader, two appointed by the Speaker of the House, the director of the Legislative Service Bureau or the director's designee and three appointed by the Legislative Council.

Michigan's current commissioners include University of Michigan law professor James J. White (chair); Buiteweg; former Oakland County Circuit Judge Robert Webster, now of Giarmarco Mullins & Horton; state Sens. Bruce Patterson, R-Canton, and Gretchen Whitmer, D-East Lansing; state Reps. Andy Coulouris, D-Saginaw, and Justin Amash, R-Cascade; and John Strand, Legislative Council administrator.

"The ULC tries to be as bipartisan as possible," Buiteweg said.

Typically, the ULC forms committees of commissioners from various states to research and write legislation to be presented at annual national conferences. Draft legislation takes years to complete with draft committees meeting several times a year. Academics, such as Professor White of U-M, and members of the American Bar Association and the American Law Institute draft proposed legislation and report it out at national conventions.

White is one of those "reporters."

"You write all these changes into the draft legislation," White said, "and then 10 really smart people (revise) it."
The national conferences are held each summer and alternate between urban and resort locations. This summer's conference is in Chicago, followed by Cleveland next year. Along with the commissioners, observers (stakeholders) are allowed to attend and make recommendations on proposed legislation that impacts them. The conferences meet seven hours a day and half a day on Sunday.

Further, commissioners are volunteers.

"No one gets paid for their time," Buiteweg said. While the state is supposed to pay for travel and lodging, budget shortfalls have wiped out even that.

"I essentially paid for it out of my own pocket," Buiteweg said.

While the university considers attending the conferences as part of White's job, Buiteweg said he is fortunate that he works for a firm that supports his "charitable" cause.

Buiteweg got involved as an observer for GMAC during a revision of Article 9 of the Uniform Commercial Code, probably the most comprehensive of the ULC's legislation accomplishments. He was appointed to the ULC five years ago.

A virtue of the ULC, according to Buiteweg and White, is that the laws are thoroughly vetted by all parties involved. By the time they are approved at national conferences, where they face two complete readings in consecutive years, they are so well vetted that they face little opposition.

The biggest obstacle to getting ULC legislation adopted by states is having elected officials willing to sponsor the bills, which are generally not very "sexy" in nature.

A typical bill involved a revision to Article 9 of the Uniform Commercial Code to resolve how to record debtors' names. Everyone signs his or her name differently, sometimes using initials, sometimes not. The commissioners spent hours debating the matter before deciding to use the individual's driver's license as the standard.

"That's a small detail," White said, "but illustrative of the problems we deal with. That's the kind of minutiae."

One of the ULC's most productive commissioners in recent years was state Rep. Andrew Richner, R-Grosse Pointe Park, who served in the Legislature from 1997 to 2002. He sponsored 49 bills that became public acts, many of them on behalf of the ULC.

Richner's bills included the Uniform Trade Secrets Act, the Uniform Fraudulent Transfer Act and the Uniform Child Custody Jurisdiction Enforcement Act. One of the bills Richner worked on as a member of the drafting committee was the Uniform Securities Act, which was just adopted within the past year.
"We spent years on that," he said. "We started in 1997 or 1998 and it didn't become law until 2008 or 2009."

While it would be a stretch to say interstate commerce would be impossible without the ULC's Uniform Commercial Code, the legal landscape would be a lot more irregular without it.

"It would certainly be a more litigious society without clear codification of our commercial laws," Richner said.

Professor White said the ULC provides for more comprehensive and better legislation than states and Congress can provide on their own.

"We would have less statutory law and more common law," White said. "Inevitably there would be a lot of holes in it."

Another benefit of the ULC's method of getting legislation passed on the state rather than the federal level is stability.

"Passing them on the state level makes them more conservative, less likely to change," White said. "You need 50 states to change the laws."

He pointed to the instability of tax and bankruptcy laws as an example what could happen to the commercial code under federal guardianship.

"Tax and bankruptcy laws repeatedly change because of (political influence)," he said.

"You can't do that with 50 state legislatures. Whether you come from the right or left, you can't get them changed. Bankruptcy and tax law will be unrecognizable 10 years down the road. That's the virtue, and Michigan is not unlike any other state."

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