

**MIDYEAR MEETING  
OF THE COMMITTEE ON SCOPE AND PROGRAM**

**UNIFORM LAW COMMISSION**

**Friday, January 11, 2013  
St. Thomas, U.S. Virgin Islands**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 8:30 am on Friday, January 11, 2013, at the Frenchman's Reef Resort in St. Thomas, U.S. Virgin Islands, by Chair Richard T. Cassidy. Committee members Tom Bolt, James C. McKay, Jr., Battle R. Robinson, David S. Walker, Suzanne Brown Walsh, and Terry J. Care were present. Also present were Michael Houghton, President, and Harriet Lansing, Chair of the Executive Committee. Bob Stein, immediate past President, attended for a portion of the meeting. Staff members present included John A. Sebert, Executive Director; Katie Robinson, Deputy Legislative Director and Communications Officer; and Elizabeth Cotton-Murphy, Chief Administrative Officer. Attending for a portion of the meeting via conference phone were David Milby, Beth Pearce, and Carolyn Atkinson of the National Association of Unclaimed Property Administrators.

Chair Cassidy welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the July 14, 2012, meeting of the Scope and Program Committee were unanimously approved.

**Study Committee Reports**

- Study Committee on **Model Tribal Legislation on Probate Transfers of Interests in Real Property** (*Dale Higer, Chair*) – Scope Liaison Jim McKay

The report from this study committee had previously been placed on Scope's consent agenda. There was no discussion. The study committee is continued.

- Study Committee on **Article 36 of Vienna Convention** (*Grant Callow, Chair*) – Scope Liaison Battle Robinson

Executive Director Sebert reported on the progress of this study committee. At the request of the Scope and Program Committee, the study committee has continued its dialogue with the U.S. State Department and various law enforcement organizations. The committee had also been monitoring potential new federal legislation that was introduced by Sen. Patrick Leahy. However, it was learned in July 2012 that the legislation that Senator Leahy is now seeking to have enacted no longer contains provisions that would preempt state law. Because potentially preemptive federal legislation is no longer pending, the committee asked for and was granted

more time to continue discussions with law enforcement and the State Department. This fall the Study Committee chair and the Executive Director received a letter from Harold Koh, the Legal Adviser to the State Department, that urged the ULC to draft uniform state legislation that would implement the consular notification requirements and that indicates that the State Department would participate actively in the support of such a drafting project. The committee has developed an issues document that outlines what the study committee might recommend. The committee requests that it be continued, and asks that Scope be receptive to taking final action by conference call in late winter or early spring if the study committee submits a report recommending drafting.

The International Legal Developments Committee has reviewed this proposal, and supports the appointment of a drafting committee.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Eyewitness Identification Procedures**  
(*David Biklen, Chair*) – Scope Liaison Jim McKay

Commissioner McKay reported that the committee, at the request of the Executive Committee at its 2012 Annual Meeting, sought the support of law enforcement organizations for a potential drafting project. The International Association of Chiefs of Police has recently submitted a letter stating that they support the ULC's drafting state legislation on this topic and that the IACP would be actively involved in any drafting project. Committee Chair Biklen this fall also has received expressions of support for a drafting project from a number of individual law enforcement leaders and judges. The committee requests that a drafting committee be formed to draft a Model Act.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Eyewitness Identification Procedures be discharged with a letter of thanks to the committee.**

*On January 12, 2013, the Executive Committee took no action on this resolution. Instead, it deferred action until the July 2013 annual meeting of the Executive Committee. Therefore, the study committee is continued, at least for the purpose of monitoring developments concerning this potential project.*

- Study Committee to **Amend the Uniform Athlete Agents Act**  
(*Dale Higer, Chair*) – Scope Liaison Tom Bolt

Commissioner Bolt reported on the progress of the study committee. A stakeholders meeting with NCAA and other stakeholders was held in fall 2012 so that the scope of any drafting project could be further defined. Based on the stakeholders meeting, at which almost all participants supported undertaking a project to amend or revise the Act, there was unanimous support from study committee members to recommend drafting. The committee requests that a drafting committee be formed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee to amend the Uniform Athlete Agents Act be formed.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- Study Committee on **Criminal Records Access and Accuracy**  
(*Bob Tennessen, Chair*) – Scope Liaison David Walker

The report from this study committee had previously been placed on Scope's consent agenda. There was no discussion. The study committee is continued.

- Study Committee on **Family Law Arbitration**  
(*Barbara Atwood, Chair*) – Scope Liaison Battle Robinson

Commissioner Walker reported on the work of the study committee. The committee has identified statutes and procedural rules to consider as a possible model as well as identifying appropriate stakeholders. The committee requests that a drafting committee be formed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Family Law Arbitration be formed.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- Study Committee on **Portability and Recognition of Professional and Occupational Licenses of Military Spouses**  
(*Paul Kurtz, Chair*) – Scope Liaison Terry Care

The report from this study committee had previously been placed on Scope's consent agenda. There was no discussion. The study committee is continued.

- Study Committee on **Recognition of Foreign Domestic Violence Protection Orders**  
(*Gail Hagerty, Chair*) – Scope Liaison Battle Robinson

Commissioner Robinson reported on the progress of the committee. The committee continues to gather information about how foreign domestic violence protection orders are handled at this time, though the committee is now concentrating on Canadian orders. The committee requests that it be continued.

After discussion, the Committee on Scope and Program recommended to the Executive Committee that the charge of the committee be limited to Canadian domestic violence protection orders, and that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on Recognition of Canadian Domestic Violence Protection Orders be formed.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- Study Committee on **Trust Decanting**  
(*Stan Kent, Chair*) – Scope Liaison Suzy Walsh

Commissioner Walsh reported on the progress of this committee. The committee has been monitoring the progress of the Internal Revenue Service and the Department of Treasury in developing guidance as to the income and transfer tax consequences of decanting so that settlors, practitioners, and fiduciaries acting in accordance with a uniform act will not suffer unintended adverse tax results. On October 22, members of the study committee, the JEB/UTEA, and the American College of Trust and Estate Counsel met with representatives from the IRS and Treasury to discuss both a potential ULC project on trust decanting and potential IRS and Treasury Department guidance. It was learned that the guidance will not be forthcoming before Dec. 31, 2013. If a drafting committee is formed, it is likely that information and drafts developed by the committee will be of assistance to the IRS and Treasury in developing its guidance. The study committee and JEB/UTEA recommend that a drafting committee be formed.

After discussion, the Committee on Scope and Program recommended that a drafting committee be formed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee on Trust Decanting be formed.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- Study Committee on **Wage Garnishment**  
(*Bill Henning, Chair*) – Scope Liaison Tom Bolt

Commissioner Bolt reported on the progress of the study committee. The committee has been working on a detailed issues list and continues to develop a list of stakeholders or potential drafting committee observers. The committee requests that it be continued, and asks that the Scope and Program Committee be receptive to taking final action by conference call in late winter or early spring if the study committee submits an early report recommending drafting.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Trust Protectors**  
(*Turney Berry, Chair*) – Scope Liaison Suzy Walsh

The report from this study committee had previously been placed on Scope's consent agenda. There was no discussion. The study committee is continued.

- Study Committee on **Model Veterans' Court Act**  
(*Harry Tindall, Chair*) Scope Liaison Terry Care

Commissioner Care reported on the progress of this study committee. The committee continues to work on an issues list, and continues to identify potential stakeholders. The committee requests that it be continued.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

## Joint Editorial Board Written Reports and Recommendations

- **JEB – Uniform Family Law**  
(*Harry Tindall, Chair*) – Scope Liaison Battle Robinson

- **Proposal: form study committee on third party child custody and visitation.**

Commissioner Robinson reported that the JEB/UFL recommends the appointment of a study committee to consider the need for and feasibility of drafting an act that deals with third party access to children, both with respect to visitation and custody determinations. Any such act would also implicate the constitutional right of parents to determine third-party visitation with their children.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state legislation on third party child custody and visitation.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- **Proposal: form study committee on authority of parenting coordinators**

Commissioner Robinson reported that the JEB/UFL recommends the appointment of a study committee to consider the need for and feasibility of drafting an act that deals with the authority of parenting coordinators. “Parenting coordinators” are usually mental health professionals licensed under state law and familiar with mediation and training in child development. The parenting coordinator is a neutral third party whose role is to be a mediator/counselor and educator for all parties. A study committee could determine if a state law that adopts uniform practice standards for parenting coordination would be beneficial.

After discussion, the Committee on Scope and Program decided to take no action at this time.

- **Proposal: form study committee on rights concerning property distribution of parties who co-habit**

Commissioner Robinson reported that the JEB/UFL recommends the appointment of a study committee to consider the need for and feasibility of drafting an act on the distribution of property of co-habitants.

After discussion, the Committee on Scope and Program decided to take no action at this time.

- **JEB – Uniform Trust and Estate Acts**  
(*David English, Executive Director*) – Scope Liaison Suzy Walsh
- **Proposal: form study committee to consider the need for revising the Uniform Disposition of Community Property Rights at Death Act.**

Commissioner Walsh reported that the JEB/UTEA recommends the appointment of a study committee to consider the need for revising the Uniform Disposition of Community Property Rights at Death Act. This Act was originally promulgated in 1971, and has been adopted in 15 states. This Act is intended to be enacted only in common law property states.

After discussion, the Committee on Scope and Program decided to take no action at this time.

- **Proposal on disposition of human remains.**

This JEB proposal had previously been placed on Scope’s consent agenda. There was no discussion, and Scope decided to take no action at this time.

- **JEB – Uniform Real Property Acts**  
(*Wilson Freyermuth, Executive Director*) – Scope Liaison Tom Bolt

There was no proposal from the JEB.

- **JEB – International Law**  
(*Michael Sullivan, Chair*) – Scope Liaison Jim McKay

There was no proposal from the JEB.

- **JEB – Unincorporated Organization Acts**  
(*Steve Frost, Chair*) – Scope Liaison David Walker

There was no proposal from the JEB.

- **PEB – Uniform Commercial Code**  
(*John Sebert, Chair*) – Scope Liaison Terry Care

There was no proposal from the PEB.

## **New Business**

- **Proposal – Draft Uniform Distance Education Regulation Act**  
(Commissioner Harvey Perlman) Scope Liaison David Walker

Commissioner Walker reported on this proposal to draft an act which would create a framework of uniform state legislation concerning state regulation of educational institutions that offer distance learning courses within the state, in order to provide states with an efficient and reciprocal vehicle to regulate institutions that provide distance education. The Association of Public Land-Grant Universities has formed a task-force to address the issue.

After discussion, the Committee on Scope and Program requested that Commissioner Perlman, with the assistance of ULC staff, consult with the Association of Land-Grant Universities' Task Force and solicit its' views, and develop additional information concerning this potential project, and report back at the Scope meeting during the July 2013 Annual Meeting.

- **Proposal – Draft Uniform State Unfair Competition Law**  
(Commissioner Anita Ramasastry) Scope Liaison Terry Care

Commissioner Care reported on this proposal to draft a comprehensive and updated state law on unfair business competition and deceptive trade practices laws. State law is currently varied on the subject: 23 states have statutes similar to the Federal Trade Commission Act, while 14 states have enacted a version of the Uniform Deceptive Trade Practices Act (1964). The divergence of current state law is detrimental to businesses and consumers alike – in that there are no consistent standards as to what types of claims are actionable as an unfair competition or deceptive trade practice. Updating existing state statutes will also help fill an emergent need to address new types of claims that are arising with respect to new forms of commerce and trade.

After discussion, the Committee on Scope and Program requested that Commissioner Ramasastry, with the assistance of ULC staff, further research the current status of state law on the subject, identify affected stakeholders, and report back with a more comprehensive proposal to be considered by Scope at its meeting during the July 2013 annual meeting.

- **Proposal – Revise the Model Eminent Domain Code**  
(Commissioner King Burnett) Scope Liaison Tom Bolt

This proposal had previously been placed on Scope's consent agenda. There was no discussion, and Scope decided to take no action at this time.

- **Proposal – Draft State Law on Youth Sports Concussion Management**  
(Erin Andrews, NYU Law School student) Scope Liaison Jim McKay

Commissioner McKay reported on this proposal to draft a state law on concussion management of youth sports participants. Since 2009, 42 states have enacted youth sports concussion legislation. The states have modeled their laws on Washington's concussion law (called the "Lystedt law"), which includes three components: (1) concussion education; (2) removal from play; and (3) medical clearance in order to return to play. This proposal suggests that the Lystedt law is inadequate, and suggests drafting a uniform act which would (1) collect and distill the best practices from current state laws; (2) broaden the legislative reach of the Lystedt model by addressing its ambiguities; and (3) add additional tenets to the Lystedt model that will enhance a state's ability to protect youth athletes.

After discussion, the Committee on Scope and Program decided to take no action at this time, but the Committee directed that Ms. Andrews be thanked for her very comprehensive and thorough proposal.

- **Proposal – Draft Uniform State Law on Computer Database for Land Records**  
(Commissioner Vince Cardi) Scope Liaison David Walker

Commissioner Walker reported on this proposal for a uniform law requiring county real estate recording offices to adopt compatible electronic recording, searching, and retrieving software systems. Such a law could be similar to the model used in the Uniform Real Property Electronic Recording Act. Like URPERA, the proposed act would be an enabling statute. Rather than dictate any particular system or technology, the act would set out some minimum standards for electronic search and retrieval of land records.

After discussion, the Committee on Scope and Program referred the proposal to the JEB for Uniform Real Property Acts for further review, with the request that the JEB report back its findings at the July 2013 meeting of the Scope and Program Committee.

- **Proposal – Recognition and Enforcement of Interim Relief Orders**  
(Steve Richman, ABA International Law Section) Scope Liaison Jim McKay

Commissioner McKay reported on this proposal to draft state legislation that would provide a mechanism for recognition and enforcement of non-final, interim orders issued by courts and arbitrators in the United States and in other countries. The proposal was presented on behalf of the ABA Section of International Law.

The JEB/IL and the ILDC have reviewed this proposal and both support the appointment of a study committee.

After discussion, the Committee on Scope and Program decided to keep this proposal on its agenda for consideration during the July 2013 Annual Meeting, and requests that ULC staff consult with appropriate ABA Sections to try to determine if there is any support for such a project among other relevant ABA Sections, and that staff report on the reception that the

Uniform Asset Freezing Orders Act received at the February 2013 meeting of the ABA House of Delegates and during the 2013 state legislative sessions.

- **Proposal – Draft Law on Benefit Corporations**  
(Commissioner King Burnett) Scope Liaison David Walker

Commissioner Walker reported on this proposal to form a study committee to consider the need for and feasibility of drafting a state law on benefit corporations. A “benefit corporation” is a form of business corporation. However, a benefit corporation has as one of its corporate purposes creating a positive impact on society and the environment. The ABA Committee on Corporate Laws (CCL) appears to be moving towards issuing a white paper on benefit corporations that will offer a set of model provisions.

After discussion, the Committee on Scope and Program decided to take no action at this time.

- **Proposal to form study committee on state firearms regulation law**  
(Commissioners Gene Hennig, David Biklen, and Fred Miller)

Chair Cassidy reported on this proposal to create a study committee to consider the feasibility of a state firearms regulation law. In 2007, Commissioners Jim McKay and David Biklen submitted a proposal on background checks for firearms purchases. While Scope recommended that a study committee be formed at that time, the Executive Committee did not adopt that recommendation, and no action was taken.

After discussion, the Committee on Scope and Program recommended that a study committee be appointed, and that the charge of the study committee be limited to the types of information that states should furnish to the Federal Government for inclusion in appropriate registries.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of state firearms legislation regarding the information that the States should furnish the Federal Government.**

*On January 12, 2013, the Executive Committee approved this resolution.*

### **Other Business**

- **Update on Prior Proposals to Revise Uniform Unclaimed Property Act**  
Scope Liaison Terry Care

David Milby, Beth Pearce, and Carolyn Atkinson from the National Association of Unclaimed Property Administrators (NAUPA) participated in this discussion via conference call. President Houghton reported that, in light of a recent development regarding the Uniform Unclaimed Property Act (UUPA) that may affect the Act and the work of the ULC, at least one key stakeholder – NAUPA – is requesting that the Scope and Program Committee reconsider the matter. Prior proposals on the subject of revising or amending the UUPA had been considered, and Scope had deferred any further consideration pending feedback from other interested parties, including the state administrators of unclaimed property. At that time, NAUPA was not in favor of moving forward with a revision.

However, this past fall, the ULC had been alerted that the Unclaimed Property Committee of the ABA Business Law Section is planning to draft a new Model Unclaimed Property Act. In light of this new development, NAUPA's representatives stated that NAUPA would like the ULC to undertake a revision of the UUPA and that NAUPA would participate in any drafting effort the ULC undertakes.

Although this is a recommendation to appoint a study committee, it is also recommended that the study committee have a reporter appointed to assist with the committee's work.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a study committee be formed to study the need for and feasibility of amending or revising the Uniform Unclaimed Property Act.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- **Request from the Drafting Committee on Implementation of the Hague Convention on Protection of Children** (*Battle Robinson, Chair*)

Commissioner Robinson reported on the request from the drafting committee on Implementation of the Hague Convention on Protection of Children to expand the charge of the drafting committee to amend existing provisions of the UCCJEA which deal with the recognition and enforcement of orders from non-convention countries concerning the protection of children so that the grounds for non-recognition will conform to those applicable to orders from convention countries.

After discussion, the Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the charge of the drafting committee on Implementation of the Hague Convention on the Protection of Children be expanded to allow consideration of amendments to existing provisions of**

**UCCJEA which deal with the recognition and enforcement of orders from non-convention countries concerning the protection of children so that the grounds for non-recognition will conform to those applicable to orders from convention countries.**

*On January 12, 2013, the Executive Committee approved this resolution.*

- **Uniform Law Conference of Canada**

Executive Director Sebert reported on the current projects of the Uniform Law Conference of Canada and on ULC's current cooperation with the ULCC.

After discussion, the Scope and Program Committee decided:

- That ULC staff should be asked to review the Uniform Arbitration Act (2000) and the 2006 UNCITRAL Model Law on International Commercial Arbitration and report back to Scope in July 2013 concerning the types of revisions to the Uniform Act that might be necessary in order to make the UAA more consistent with the UNCITRAL Model Law;
- That the Scope and Program Committee would take no action at this time concerning a potential ULC project to draft a Limitations Act; and
- That the Scope and Program Committee would take no action at this time concerning a possible ULC project on joint ventures.

Having no further business, the Committee on Scope and Program was adjourned at 4:30 pm.