

MEMORANDUM

To: Member of the Drafting Committee
Advisors and Observers

From: Battle Robinson
Robert Spector

Re: A Choice of Drafts

Date: September 28, 2012

Along with this memo you should receive from the Chicago office two separate files. The files contain different approaches to the draft. One of the main issues for the fall meeting is to determine which approach to the draft the committee should take.

Our greatest difficulty with incorporating the 1996 Convention into the UCCJEA has been structural. We have experimented with various combinations of setting convention cases out in a separate article and using a territorial scope to each section. The resulting hybrid has not seemed terribly satisfactory. It seems as though one or the other approach should be used for the entire draft.

Therefore we have come up with two different drafts. One is entitled “full incorporation.” It is based on the 2008 version of UIFSA. That version of UIFSA amended the non-convention section to indicate whether those sections applied to states only or to states and foreign countries. That approach is taken in this version of the draft. Each section, where it is necessary, refers to “states” and “foreign countries”, or “states” and “non convention countries”, or “states” and “convention countries.” This means that it is no longer necessary to have a section like Section 402 of the draft that went to a first reading this summer. That section indicated which of the earlier sections applied to Article 4. Each section, where necessary, now indicates the territorial scope of its application. It is also likely that under this approach Section 105 is redundant and probably could be eliminated.

There is another draft entitled “All in 4.” In this version all the earlier sections that could possibly apply to Article 4 are brought forward and included in Article 4 with appropriate changes. These changes include substituting “measure of protection” for “child-custody determination”, “authority” for “court” etc. The only reference back to the earlier articles is in Section 422 which applies the procedure for recognition and enforcement used for custody determination to measures of protection. Under this version Section 402 is also not necessary. However, Section 105 continues to be applicable and is retained.

These files are being sent to you early so you will have sufficient time to study them before our next drafting committee meeting. Our first order of business will be to determine which version of the draft will be used going forward.