

Joint Editorial Board for Uniform Family Law
Fall 2011 Meeting--New Orleans, LA
Minutes
3 December 2011

The meeting was called to order by Chairman Harry Tindall. In attendance were Mike Coffee (Dept of State), Mary Ferriter (AFCC), Melissa Kucinski (ABA), Jeff Atkinson (ABA), Linda Elrod (ABA), Catherine Petersen (AAML), Linda Lea Viken (AAML), Gail Hagerty (ULC), and Eric Fish (ULC)

Legislative Report

ULC staff member Eric Fish provided a summary of legislative activity involving uniform family laws during the 2011 session. He noted that Puerto Rico will likely pass the UCCJEA this fall, leaving only Massachusetts as the only jurisdiction without the act. He also discussed the progress of the UIFSA2008 amendments and discussed that several states are enacting the legislation with conditional enactment language as they await Congressional action to mandate passage. He also provided the legislative plans for the 2012 session and expressed that significant effort will be put on introduction and enactment of the Uniform Collaborative Law Act. The act has been passed in three states, Utah, Texas, and Nevada and introductions are planned in over 10 states next year.

UIFSA and FFCCSOA

The JEB readdressed the previous conversations that courts have held that UIFSA and FFCCSOA conflict regarding whether parties seeking to modify child support orders, after the original issuing state has lost continuing exclusive jurisdiction, may do so in their state of residence. Two state supreme courts have reached opposite conclusions as to whether FFCCSOA preempts UIFSA in this regard. The JEB has issued commentary that attempted to rectify the dispute and correct a holding in Massachusetts.

Harry Tindall also added that he has been in contact with Meg Haynes who is working on an amendment to FFCCSOA that would mitigate the conflict between the federal and state law. The JEB discussed the possibility of adding this amendment to the federal implementing legislation that will be needed for complete accession to the Hague Convention on Family Maintenance. Mike Coffee indicated that although a Senate bill has been introduced for this purpose, there is also a House bill currently being worked on that would be introduced into the House Ways and Means Committee. The two bills have different language pertaining to guidance for the IV-D agencies.

The JEB was in agreement that additional language resolving the FFCCSOA must be a priority and that any bills to implement the Hague Convention and mandate UIFSA must have this language. The federal mandate offers the best chance to correct the UIFSA/FFCCSOA issue and ensure passage. It was also added that the AAML has been successful in prior years in their federal legislative outreach and they offered to mobilize their chapters and members as necessary.

The JEB-UFL passed the following resolution: The JEB-UFL urges the ULC leadership to engage with partners in Congress, the State Department, and the Department of Health and Human Services to use the opportunity presented by the implementation of UIFSA2008 to protect UIFSA against erosion via other federal law and the erroneous state court holdings and ensure that language addressing the relation between UIFSA and FFCCSOA be part of the implementing legislation.

Discussion of Draft of Uniform Deployed Parents Custody Act

The JEB reviewed and discussed the comments provided by Bob Spector relating to flaws that may exist in the draft of the Uniform Deployed Parents Custody Act that may cause issues with the jurisdictional components of the UCCJEA. Bob is currently working with the reporter to harmonize the issues. The JEB also discussed that with U.S. Supreme Court rulings on the parental right to raise a child, the ability to transfer one's right to a third party may raise issues similar to those found in the *Troxel* case. The JEB urged a more balanced effort to take both the concerns of the military families and current law into consideration while drafting this for final consideration.

International Domestic Violence Orders

Battle Robinson presented the issue of international domestic violence orders to the JEB for consideration. Several years ago, Battle served as a liaison to efforts between the United States and Canada to implement recognition of domestic violence protection orders issued from each country. Canadian development of recognition law was much more progressive than existing American law on the issue. Canada approved an international recognition law in August and it will be introduced in Saskatchewan next month. The law allows different provinces to exclude countries by regulation, effectively creating a power to forgo recognition of orders from countries without the same rights and due process as Canada. Mike Coffee also noted that Canada will be bringing this issue to the Hague Permanent Bureau for consideration, but the timing is such that action will be delayed for several months.

The question was presented to the JEB: Should the UIEDVPOA be amended to include all foreign nations or just Canadian orders based upon the efforts in Canada. Linda Lea Viken raised that many protection orders have custody orders in them, so there must be consideration to the visitation and interaction provisions of both protection and custody orders.

The JEB-UFL passed the following resolution: The JEB-UFL urges the ULC leadership to form a study committee that will address recognition and enforcement of Canadian domestic violence protection orders and further, work with the Department of State and others to address the all international domestic violence protection orders.

Premarital and Marital Agreements

The draft of the Premarital and Marital agreement Act was discussed. The JEB noted the need to include more family law practitioners in the drafting process as there remain several issues, such as second look and legal separation that need to be addressed.

New Uniform Law Projects

The JEB engaged in an extended discussion of new areas of law where uniformity would be desirable. Many of the JEB members noted that courts are becoming friendly with the idea of family law based arbitration. The AAML has a model act on the area and others expressed that this could be a way of aiding judicial efficiency.

The JEB-UFL passed the following resolution: The JEB-UFL urges the ULC leadership to form a study committee that will address the viability of a uniform law on family law arbitration.

The JEB also discussed a uniform cohabitant's rights law. It was noted that many states have some sort of law, but the laws are varied and may be controversial. This project was given lower priority, but the JEB asked for the Reporter to provide the documentation how many states have laws addressing cohabitants rights and whether they can register the union as something other than a marriage.

Administrative Business

The members of the JEB asked to be added as observers to all family law drafting and study committees. The JEB will also attempt to meet telephonically, focused on providing more commentary to drafting committees.

The JEB discussed the addition of new member organizations, noting that the AFCC has been a long time observer and active participant in JEB meetings. Further, the AAML and AFCC are working together on many joint projects. As such, ***The JEB-UFL passed the following resolution: The JEB-UFL will extend a formal invitation to the AFCC to become members of the JEB on UFL. Further, the JEB will consult with the National Association of Juvenile and Family Court Judges and explore their membership on the JEB.***