

Minutes
Midyear Meeting of the Executive Committee
Uniform Law Commission

Saturday, January 18, 2019
Santa Fe, New Mexico

Daniel Robbins, Chair of the Executive Committee, called the meeting to order on January 18, 2020, at 9:04 a.m. Mountain Time.

The following members of the Committee were present in person or by conference phone: Carl H. Lisman, President; William Breetz, Vice President; Timothy Berg, Committee on Scope and Program Chair; Steve Wilborn, Legislative Committee Chair; Martha Starkey, Secretary; Tom Buiteweg, Treasurer; Anita Ramasastry, Immediate Past President; Jamie Pedersen; Paula Tackett; and Ryan Leonard.

Also present: Commissioner Howard J. Swibel, Chair of the Uniform Law Foundation Trustees; Tim Schnabel, Executive Director; Elizabeth Cotton-Murphy, Chief Administrative Officer; Katie Robinson, Legislative Program Director; and Ben Orzeske, Chief Counsel. The following commissioner Division Chairs were present in person or by conference phone for part of the meeting: Mary M. Ackerly; William W. Barrett, Lead Division Chair; Thomas S. Hemmendinger; William H. Henning; John T. McGarvey; and Cam Ward.

1. Minutes

A motion was made and approved accepting the webinar minutes of the Executive Committee Meetings held October 1 and October 24, 2019.

2. Name Changes

No requests for name changes were submitted for consideration during this meeting.

3. Consideration of Excused Absences

A motion was made and approved excusing the absence of Effie V. Bean Cozart (TN) from the 2018 Annual Meeting in consideration of her written request.

A motion was made and approved excusing the absences of the following commissioners from the 2019 Annual Meeting in consideration of their written requests: Adam Brown (IN); Robert J. Desiderio (NM); Alberto R. Gonzales (TN); Nicole Julal (GA); James G. Mann (PA); Kieran Marion (MI); Christopher R. Nolen (VA); Genie Orenschall-Daykin (NV); Byron D. Sher (CA); Ben Sones (MS); Tregarrick Taylor (AK); and John Randall Trahan (LA).

4. Requests for Life Membership

A motion was made and approved nominating Robert J. Desiderio (NM) and Byron D. Sher

(CA) for election to life member of the Conference.

A motion was made and approved nominating Lee Yeakel (TX) for election to life member of the Conference contingent upon attending the 2020 annual meeting in Madison, Wisconsin.

5. Request for Uniformity

A motion was made and approved designating the Public Participation Protection Act a Uniform Act.

6. Requests for Technical Amendments

a. Uniform Trust Code: amendments to Section 112 comment

Chief Counsel Orzeske summarized the written request received from the Joint Editorial Board for Uniform Trust and Estate Acts that the Executive Committee adopt the amendment to the comment of Section 112 of the Uniform Trust Code, using the procedure permitted by Section 4.3(b)(3) of the ULC Constitution. The purpose of the amendment is to provide additional guidance on the meaning of the words “as appropriate” in the black letter of this section.

A motion was made and approved under Section 4.3 of the ULC Constitution authorizing the proposed technical amendments to the Uniform Trust Code.

b. Uniform Power of Attorney Act: amendments to the prefatory note and official comments

Chief Counsel Orzeske summarized the written request received from the Joint Editorial Board for Uniform Real Property Acts that the Executive Committee adopt the proposed technical amendments to the Prefatory Note and official comments of the Uniform Power of Attorney Act Code, using the procedure permitted by Section 4.3(b)(3) of the ULC Constitution. The purpose of the amendments is to make clear that Section 119 was not intended to validate a deed executed pursuant a defective power of attorney.

After discussion, a motion was made and approved under Section 4.3 of the ULC Constitution authorizing the proposed technical amendments to the Uniform Power of Attorney Act.

7. Approval of the Audit Report

Treasurer Buiteweg reported on the audited financials. A motion was made and approved accepting the audit report.

8. Changes to Personnel Policy Manual

Elizabeth Cotton-Murphy, Chief Administrative Officer, summarized proposed changes to the

Personnel Policy Manual to comport with short term disability coverage. A motion was made and approved authorizing the change to the current policy manual.

9. Approval of Resolution Terminating Ascensus Trust

Elizabeth Cotton-Murphy reported on the change in retirement plan record keeping services. The outgoing record keeper requires approval of the proposed resolution designating the new plan trustee as part of the transition process. A motion was made and adopted approving the resolution.

10. Consideration of Continuation or Discharge of Standby/Other Committees

No action was taken.

11. Report of the Legislative Committee

Commissioner Wilborn, Legislative Committee Chair, summarized the written reports submitted for the Committee's consideration. The reports were accepted.

Katie Robinson, Legislative Program Director, reported on staffing changes and plans for the legislative summit in August.

Chief Counsel, Ben Orzeske, reported that the legislative staff is working with Council members to remove hurdles to enactment in states with ongoing problems.

12. Division Chair Reports

Commissioners Ackerly, Barrett, Hemmendinger, Henning, McGarvey, and Ward reported on the drafting and study committee activities of their respective divisions.

13. Drafting Committee on Tort Law Relating to Drones Act

President Lisman reported on the status of the Drafting Committee on Tort Law Relating to Drones Act. Representatives from the drafting committee, the drone industry, the real property opponents of the last draft, and others, met in DC in December. Consensus is unlikely among the competing interests currently.

After discussion, it was decided that the Drafting Committee on Tort Law Relating to Drones Act stand down pending further action by the FAA and that the reporter be paid his honorarium. Should the drafting committee become active in the future, a reporter would be engaged at that time.

14. Current Presidential Priorities

- a. Proposal from Elizabeth Kent

President Lisman asked the Executive Committee if it would support a one-time request to the ULF to fund the creation of a student internship with the Hawaii Speaker of the House to focus on uniform laws. The paid summer internship would offer a first-year law student the opportunity to examine specific uniform laws selected by the Speaker for possible introduction in the Hawaii Legislature. Commissioner Kent will contribute \$2,000 and hopes that the Uniform Law Foundation and Advocates for Public Interest Law will match that contribution for a total of \$6,000.

After discussion, a motion was made and approved authorizing the President to request a one-time grant from the Uniform Law Foundation in the amount of \$2,000 to support a student internship with the Hawaii Speaker of the House to focus on uniform laws.

b. Monitoring Committee on Privacy Law

President Lisman recommends that a monitoring committee be formed to study privacy law. The committee would serve as an incubator for new ideas as well as a place where scope proposals could be referred for review and recommendation. The committee might also be tasked with the development of a set of privacy principles. A research director would be appointed to support the work of the committee.

A motion was made and approved authorizing the formation of a Monitoring Committee on Privacy Law.

c. Certiorari Granted on the Issue of the Faithless Electors Act

President Lisman reported that the Supreme Court granted certiorari on the issue of whether presidential electors may exercise discretion in casting their votes. Although not directly at issue, the case calls into question the constitutionality of the Uniform Faithful Presidential Electors Act.

President Lisman will contact Commissioner Bopp of Indiana to discuss his potential involvement in filing another amicus brief and report back. Commissioner Berg offered to assist Commissioner Bopp in drafting the brief.

d. Proposal to Terminate the Registration Fee for the Annual Meeting for Commissioners

President Lisman reported on an undercurrent of discontent among commissioners about the annual registration fee. Some members have suggested that it is inappropriate to charge a registration fee when members are required to attend the meeting. Much research has gone into whether there are causal relationships between reimbursement and attendance, attendance and enactment, and other correlations. We do not know what impact eliminating the registration fee might have on attendance or participation at the meeting. A chart distributed provides registration fee history dating back to 1992.

The committee discussed registration fees at length. Many states cover the cost of annual meeting registration fees; current fees only partially subsidize social and business

expenses. Establishing a scholarship program to cover travel expenses for those members who otherwise receive no funding and are, as a result, unable to attend the meeting, might have a more meaningful impact on attendance. Complete elimination of fees would make the potential reinstatement of those fees in future state budgets quite difficult. Rather than a complete elimination, fees could be reduced leaving the possibility of increasing fees in the future if needed.

President Lisman reminded the Committee that several states pay state dues plus an additional dollar amount used to cover annual meeting travel expenses. ULC staff administers the annual meeting reimbursement for commissioners in these states. If ULC could convince more states to add an amount to be used to pay travel expenses, it could have a positive impact on attendance in certain states.

Commissioner Robbins suggested that we reconsider charging registration fees to observers and advisors and suggested that charging registration fees may be counter-productive to stakeholder involvement.

The committee will continue to consider ways to approach this issue and may also revisit the concept of establishing a hardship scholarship to provide funds to support annual meeting travel in the future.

15. State and Federal Relations

a. Report on the Work of ULC's Federal Government Relations Representatives, Nelson Mullins Public Strategies, and other Federal Relations Matters

Katie Robinson reported that Nelson Mullins is currently tracking legislative activity for the following areas of law: data privacy; guardianship; highly automated vehicles; college athletes; student compensation; drones; beneficial ownership; and virtual currency. Leadership and staff are kept informed on activity at the federal level. Nelson Mullins has also scheduled meetings between ULC leadership and members of Congress and congressional staff that coincide with drafting committee meetings in DC.

16. Budget and Finance

a. Proposed Revisions to the FY 2019-2020 Budget

Commissioner Buiteweg summarized the memorandum and proposed budget submitted to the Committee and led a discussion of the proposed fiscal year 2020 budget. A motion was made and approved adopting the budget as proposed.

b. ULC Financial Report, December 31, 2019

Commissioner Buiteweg summarized the written report on ULC financial statements ending December 31, 2019. The report was received by the committee.

c. Renewal of Contract for Peter Lown, Executive Director of the ILDC and Director of Research for the IJEB

Chair Robbins reported on recent activities of Mr. Lown. The contract expires in April and the committee took no action to renew the contract.

d. State Dues Report

Commissioner Buiteweg summarized the written report submitted for the Committee's consideration. The report was received by the committee.

e. Report on ULC Investments

Commissioner Buiteweg summarized the written report submitted for the Committee's consideration. The report was received by the committee.

f. ULC Funding to Support the JEB for Uniform Real Property Acts

Commissioner Breetz summarized the memorandum submitted for the Committee's consideration. A motion was made and approved authorizing ULC annual funding in the amount of \$5,000 to support the JEB for Uniform Real Property Acts.

g. Annual Meeting Subsidy

President Lisman reported on projected annual meeting expenses and the need to include annual meeting expenditures in the budget rather than rely on fundraising to cover cost overruns.

h. ADA Document Conversion

Ms. Cotton-Murphy summarized the memorandum submitted for the Committee's consideration. New final acts and enactments materials are being created and posted in an ADA-accessible format. Odessa Glaza and Gloria Korpas have been trained and are assisting Lucy Grelle to convert the backlog of final drafts and enactment materials posted to the drafting committee pages of the ULC website.

Licensed software is available through Common Look that could expedite the conversion process. The staff is researching this possible software solution and may recommend procuring several licenses in the future to expedite the conversion of documents.

17. Plans for the 2020 Annual Meeting.

President Lisman reported on plans for the 2020 annual meeting in Madison, Wisconsin.

18. Contract Renewals

a. Nelson Mullins

The contract with Nelson Mullins renews in August and discussion of this agenda item was deferred to the July Executive Committee meeting.

b. Contracts with Lobbyists

Commissioner Breetz reported that hiring lobbyists to assist with dues collection has been helpful. Attempts are being made to restore dues in Maine, New Hampshire, Puerto Rico and Rhode Island.

Commissioner Wilborn reported on negotiating for additional strategic advice on legislative work in Missouri and North Carolina at no additional cost to the ULC, as a pilot program to see what impact, if any, using outside lobbyists will have on enactment efforts.

1. Brennan Group (MA)

Commissioner Breetz reported on recent lobbying activities to secure state dues undertaken in the Commonwealth of Massachusetts by the Brennan Group, Inc. A copy of the contract was submitted for the Committee's information and a call is being scheduled with the Massachusetts delegation, ULC leadership, and representatives from the Brennan Group.

2. Harness (MO)

Commissioner Breetz reported on recent lobbying activities to secure state dues undertaken in the state of Missouri by the Harness & Associates. A copy of the contract was submitted for the Committee's information.

3. Nexsen Pruet (NC)

Commissioner Breetz reported recent lobbying activities to secure state dues undertaken in the state of North Carolina by Nexsen Pruet. A copy of the contract was submitted for the Committee's information.

19. McAllister & Quinn Recommendations

Tim Schnabel, Executive Director, reported that the ULC retained McAllister & Quinn to assist ULC in seeking grants in November. McAllister & Quinn is currently developing recommendations regarding opportunities for the ULC to submit funding requests in particular areas of work.

20. Diversity and Inclusion Committee Request

Commissioner Leonard reported on recommendations from the subcommittee assigned to consider issues of diversity and inclusion. The subcommittee does not see a need for a separate standing committee.

The Executive Committee discussed the possibilities of expanding the charge of the Membership and Attendance Committee to include diversity and inclusion activities, or the creation of a subcommittee of that committee focused on these issues. They also discussed appointing diversity liaisons and hiring staff or consultants to help the organization think through and prioritize how to best approach these issues. The Committee agreed that the ULC needs a long-term strategy for the diversity and inclusion initiative.

President Lisman will appoint the subcommittee of the Executive Committee charged with developing a list of tools needed to execute a diversity and inclusion plan. This subcommittee will report to the Executive Committee in July.

21. ELI Advisory Member Recommendation

Executive Director Schnabel reported on a recommendation received from the ILDC that the ULC seek institutional membership with the ELI. The ELI does allow institutional membership and would seek an annual fee of 800 to 1,000 euros from the ULC. The Committee took no action on the ILDC recommendation and decided instead to continue developing a partnership with the ELI as opposed to joining as a dues-paying member.

22. Conflict of Interest Policy for ABA Advisors

Executive Director Schnabel reported on the discussions of a subcommittee appointed to consider a proposed conflicts of interest policy for ABA advisors, drafted by Commissioner Tom Bolt, Chair of the Committee on Liaison with the American Bar Association, using the existing ULC policy as a template. Commissioner Bolt has proposed to recommend that the Board of Governors of the American Bar Association approve the policy.

The Committee expressed the view that the ULC is in no position to request such a policy from the ABA nor to prohibit the ABA from sending experts in the subject matter who also end up being out of compliance with our policies. Although the ABA may decide for itself to establish a policy regarding participation in the ULC drafting process, the ULC will not request that the ABA develop such a policy.

Executive Director Schnabel was asked to review and update communications to observers and advisors to include reference to the ULC policies on harassment and other issues.

23. Pipeline Review

Commissioner Lisman led a discussion of the proposed possible reading schedule for the 2020 annual meeting distributed for the Committee's consideration.

24. Request for Expansion of Scope for the Unregulated Transfers of Adopted Children Act

President Lisman summarized the request submitted for the Committee's consideration. The Drafting Committee on the Unregulated Transfers of Adopted Children Act is requesting that the scope of the act be expanded. Currently the committee is authorized to draft an act that affects only adopted children. The committee requests that the scope of the act be expanded to prohibit the unregulated custody transfer of all children.

After discussion, no action was taken. President Lisman and Chair Robbins will attend the late January drafting committee meeting and will discuss the request in person with that committee.

25. Report of the Committee on Scope and Program

Commissioner Berg presented the report of the Committee on Scope and Program ("Scope").

a. Recommendations Concerning Discharge of Committees

1. Scope approved the following resolution for consideration, recommending that the Study Committee on Disposition of Human Embryos and Gametes be discharged.

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Disposition of Human Embryos and Gametes be discharged with a letter of thanks to the committee.

A motion was made and approved to discharge the Study Committee on Disposition of Human Embryos and Gametes.

b. Recommendations Concerning Establishment of New Study Committees

Scope approved the following six resolutions for consideration, recommending study committees be formed with respect to the following issues:

1. Scope approved the following resolution for consideration, recommending that a study committee to study the need for and feasibility of state legislation on transparency in supply chains be formed:

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 a uniform act to address the existence of child labor, forced labor, human trafficking, and modern slavery in global supply chains (including within the U.S.). The committee will consider different potential legislative options to prevent these human rights abuses including (a) disclosure and transparency laws such as those in existing state legislation, (b) laws requiring companies to engage in supply chain due

diligence to address human rights impact more generally, or (c) procurement legislation that would link the receipt of state or local contracts to a company's actions. The committee will specifically consider the issue of what types of businesses might be addressed in such legislation, keeping in mind the special considerations for small and medium-sized enterprises.

A motion was made and approved to appoint a study committee on transparency in supply chains.

2. Scope approved the following resolution for consideration, recommending that a study committee to study the need for and feasibility of state legislation on choice of law and choice of court be formed:

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 a set of uniform laws on choice of law and choice of court clauses in international business transactions.

A motion was made and approved to appoint a study committee on choice of law and choice of court.

3. Scope approved the following resolution for consideration, recommending that a study committee to study the need for and feasibility of state legislation on the feasibility of state legislation addressing name, image, and likeness issues for college athletes be formed:

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 addressing name, image, and likeness issues for college athletes.

A motion was made and approved to appoint a study committee to study state legislation addressing name, image, and likeness issues for college athletes.

4. Scope approved the following resolution for consideration, recommending that a study committee to study the need for and feasibility of state legislation on online sales and state tax collection be formed:

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 state taxation of online sales and collection of taxes.

A motion was made and approved to appoint a study committee on online sales and state tax collection.

5. Scope approved the following resolution for consideration, recommending that a study committee to study the need for and feasibility of state legislation on tenants in common ownership be formed:

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 to resolve problems arising under current common law tenancy-in-common ownership default rules in tenancy-in-common properties that would avoid the requirement of unanimity in decisions regarding the property.

A motion was made and approved to appoint a study committee on tenants in common ownership.

6. Scope recommends that a study committee to study the need the amendment or revision of the Uniform Health Care Decisions Act be formed:

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 Health Care Decisions Act, including (a) the priority list of those who can act as surrogates, residual surrogates, oral appointments, domestic partnerships and disqualification of surrogates, (b) scope of care decisions, and (c) decision-making by mature minors.

A motion was made and approved to appoint a study committee on the need to amend or revise the Uniform Health Care Decisions Act.

c. Recommendations Concerning the Establishment of New Drafting Committees

1. Scope approved the following resolution for consideration, recommending that a drafting committee on the conflict of laws in trusts and estates be formed:

RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Drafting Committee to Address Conflict of Laws in Trusts and Estates be formed, to address issues set forth in Appendix A in the JEB's report of November 10, 2019, as well as other issues that arise during drafting.

A motion was made and approved to appoint drafting committee to address conflict of laws in trusts and estates.

Appendix

1. Officer Reports

a. Report of the Vice President

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

b. Report of the Secretary

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

c. Report of the Treasurer

These reports were discussed under Agenda, Item 16.

2. Committee Reports

a. Committee on State and Federal Relations and Other Organizations

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

b. Criminal Justice Reform Committee

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

c. Committee to Monitor Developments in Civil Litigation and Dispute Resolution

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

d. Committee to Monitor Health Care Law

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

e. Technology, Committee to Monitor Developments in

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

f. American Bar Association, Committee on Liaison with

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

g. History Committee

No report was received.

h. Public Information Committee

A written report was submitted for the Executive Committee's consideration. That

report was received by the Committee.

- i. International Initiatives
 - 1. International Legal Developments Committee
A written report was submitted for the Executive Committee's consideration.
That report was received by the Committee.
 - 2. Joint Editorial Board for International Law
A written report was submitted for the Executive Committee's consideration.
That report was received by the Committee.
 - j. Tribal Law Activities
No report was received.
 - k. Academic Partnerships, Committee on
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.
 - l. Trust and Estates Acts, Joint Editorial Board for Uniform
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.
 - m. Real Property Acts, Joint Editorial Board for Uniform
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.
 - n. Unincorporated Organization Acts, Joint Editorial Board on Uniform
No report was received.
 - o. Family Law, Joint Editorial Board for Uniform
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.
 - p. Uniform Commercial Code
See the Report of the Vice President, Division E Report.
3. Meeting Report
- 1. Report on Committee Meetings
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.
 - 2. Report on Annual Meeting and Midyear Meeting Dates and Locations
A written report was submitted for the Executive Committee's consideration. That report was received by the Committee. The ULC will meet in in Madison, WI, Friday, July 10 – Thursday July 16, 2020; the ULC will meet in New York, NY,

Thursday, July 1 – Wednesday, July 7, 2021; and the ULC will meet in Philadelphia, PA, Friday, July 8 – Thursday, July 14, 2022.

4. Office Reports

a. Grants Report

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

b. Activity Report of the Executive Director

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

c. Activity Report of the Chief Administrative Officer

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

5. Reports of the Uniform Law Foundation

1. Fundraising

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

2. Trustee Minutes

Minutes from the recent Trustee meeting were received by the Committee.

3. ULF Financial Report, November 30, 2019

A written report was submitted for the Executive Committee's consideration. That report was received by the Committee.

The meeting adjourned at 4:44 p.m. Mountain Time.