

**Joint Editorial Board for Uniform Family Law  
December 12, 2015  
Palmer House Hotel, Chicago, Illinois  
Meeting Minutes**

**Attendees**

Uniform Law Commissioners:	Barbara Atwood (Chair), Harry Tindall (Emeritus Member), Suzanne Reynolds
Reporter:	Linda Elrod
ULC Staff:	Liza Karsai (for portions), Lindsay Beaver
ABA Advisors:	Melisa Kucinski, Sam Schoonmaker
American Academy of Matrimonial Lawyers (AAML):	Linda Lea Viken, Catherine Petersen
Association of Family and Conciliation Courts (AFCC):	Mary Ferriter, Nancy Ver Steegh
Association of American Law Schools (AALS):	Courtney Joslin
State Dept. Office of Private International Law:	Mike Coffee

**Introduction and Welcome**

The meeting was convened at 9:00 a.m.

Chair Atwood welcomed the committee members. She noted that the JEB is composed of a core group of organizations involved in family law reform. She reviewed the JEB-UFL Memorandum of Understanding, noting that the purpose of the JEB is to promote education of the bar and public with respect to family law acts, provide timely reports to the respective organizations on board activities, review unofficial amendments proposed to the acts, review court decisions interpreting the acts, publish commentary or arrange for articles to encourage uniform interpretation of the act and vet proposals for drafting projects and study committees for new uniform family laws.

A motion to approve the meeting minutes from the December of 2014 was approved.

**Update on International Developments**

Mike Coffee provided an update on international developments and projects with a family law focus.

Surrogacy and Status of Children - The 2015 Council on General Affairs and Policy of the Hague Conference on Private International Law created an experts' group to explore the feasibility of starting work on private international law issues relevant to status of children, including issues arising from

international surrogacy arrangements. The State Department is contemplating holding a public meeting in advance of the February experts' group meeting. If the Department does hold a meeting, it will publish a notice in the Federal Register. Mike Coffee will send a link to the notice to ULC staff to circulate to the JEB-UFL membership.

Civil Protection Orders – The issue of whether there should be a project to, among other things, recognize and enforce civil protection orders is an area of ongoing work at Hague Conference. (In 2015, the ULC promulgated the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, which deals with this issue in a more narrow way.) A number of questions have been raised in regard to adequacy of protections in another country for issuing order, internationalization of an instrument, the level of ease at which a perpetrator could get a domestic violence protection order, and asylum claims based on home country's failure to protect from domestic violence. In March 2015, the Council on General Affairs and Policy invited the Permanent Bureau of the Hague Conference to do more exploratory work in this area, subject to available resources.

Voluntary Agreements in Family Law Area – In November, an experts' group met to discuss the role that family law conventions play in enforcing family law agreements (such as mediated agreements) as well as the need for any new international instrument on this topic. Mike notes that, in the United States, some feel like there is not much of a need for this instrument because, if you have a voluntary agreement, you can have it incorporated into a court order which can be enforced. It can also be enforced as a matter of contract.

Cohabitation Outside of Marriage – The Council on General Affairs and Policy asked the Permanent Bureau to prepare a questionnaire on private international law issues relating to cohabitation outside of marriage and to report back in 2017. This could justify holding a public meeting if the focus of the questionnaire is on policy issues. (There would be less of a need for a public meeting if the questionnaire merely focuses on the status of current law.) The committee recognized the importance of this issue in light of the growing populations of unmarried couples.

Abduction Convention – A working group at the Hague Conference has been meeting for a couple of years working on a guide to good practice for article 13(b) of the Convention, which provides that a court does not have to order the return of an abducted child if there is a grave risk that return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. The next meeting will be held in January.

The JEB discussed problems of UCCJEA/Hague interface. There is some concern state courts are turning cases into custody (best interest of the child) cases instead of straight return cases. There is some sentiment circulating that federal judges tend to have a better understanding of treaties.

Child Support Convention – State Department is pleased that Congress passed the federal implementing legislation for this Convention. All but five jurisdictions have enacted UIFSA 2008, including Massachusetts, Michigan, New Jersey, Pennsylvania and U.S. Virgin Islands. Once all jurisdictions have implemented UIFSA 2008, the State Department would ask the President to sign the instrument of ratification. The Convention will enter into force for the United States after it deposits this instrument with the Government of the Netherlands. The majority of countries currently party to the Convention are European. Canada and Mexico are still considering at this time. The Caribbean determined that it probably did not have the resources to establish central authorities.

Child Protection Convention – The Convention was signed in 2010. The ULC amended UCCJEA to conform to international aspects in 2013. The State Department is working to address other issues presented by the Convention, which will likely require federal legislation.

### **Enactment Status of Approved Family Law Acts**

The committee then reviewed the enactment status of approved family law acts. A list of current enactments of family law acts was included in the meeting materials. Reporter Elrod asked if we could include the acts that are retired such as Uniform Premarital Agreement Act which 26 states have and the Uniform Marriage and Divorce Act which served as basis for many state laws.

### **Drafting Committees**

The committee next discussed the status of current drafting committees on new family law acts.

#### **Uniform Family Law Arbitration Act**

Chair Atwood and Reporter Elrod, also Chair and Reporter for the Family Law Arbitration Drafting Committee gave an overview of the committee's work. The committee last met in November. An ongoing concern is the preemptive effect of the Federal Arbitration Act over portions of the uniform act.

The uniform act will allow for pre-dispute family law arbitration agreements. There appears to be a lot of hostility to arbitration in the consumer contexts. While family law arbitration does not have the same baggage as commercial arbitration, the drafting committee still wants people to know what they are getting into by waiving the process.

Custody and support may be an ongoing point of discussion. Some states do not allow arbitration of custody matters. In some states, like South Dakota, alimony would be exempted.

#### **Revisions of Uniform Parentage Act**

This project was just approved for drafting. The committee will be tasked with making sure that the act applies equally to same sex couples. It will also address the issue of identifying information for gamete providers and the child's right to genetic information. Commissioner Jamie Pedersen will chair the committee. Professor Courtney Joslin will serve as reporter. It is projected for a first reading in July 2016.

#### **Non-Parental Rights to Child Custody and Visitation**

The committee, chaired by Debra Lehrmann, is expected for a final reading in 2017. Jeff Atkinson is reporter. The draft is aimed at persons who do not have legal parental status but have a basis for seeking custody or visitation based on de facto status or being grandparent/stepparent. The JEB noted that Maine legislation equates de facto parentage with full parentage. This will be something for this committee and the Revisions to the Uniform Parentage Act Drafting Committee to work closely on.

Director Karsai raises the issue of same-sex couples that adopted each other in the years before the *Obergefell* decision. Parentage issues become complicated when the adopted couple then have children.

Harry Tindall raises the question of whether we are likely to have an act that allows for a child to have three parents. California and Maine allow for this by statute, and Louisiana allows for this outcome through case law.

#### Coordinating Committee to Draft Technical Amendments to ULC Acts after Obergefell

This committee is in the preliminary stages. It will be chaired by Commissioner Gail Haggerty and it will likely entail a two-year process. It will likely progress in tandem with the Revisions of Uniform Parentage Act project.

#### **Proposals Referred from the Committee on Scope and Program**

##### An Act to Address the Practice of “Rehoming” after a Failed Adoption

The consensus of the JEB is that rehoming has broader implications for international relations and therefore it is not a topic for uniform law. A uniform law might intrude on child welfare and guardianship practices in a state. Furthermore, this activity is already not sanctioned under current laws.

##### An Act to Address Barriers to Adoption of Foster Children

The Interstate Compact for Placement of Children deals with this issue. (Harry Tindall notes that the Interstate Compact for Placement of Children is under amendment.) In addition, federal law provides for adoption subsidies and welfare incentives. Congress may be in a better position to take this on.

The article that was circulated with JEB materials is dated. ULC staff is directed to conduct further research to identify whether there has been anything further written on this issue. The JEB does not think that there is a role for a uniform law here, but perhaps it will weigh-in by writing a letter.

#### **Proposal Referred from Other ULC Committees**

##### Scope of Minor Guardianships in the Amendments to Uniform Guardian Power of Attorney Act

The JEB notes that the underlying act has not been revised since 1969. If the committee is undertaking a whole scale revision, then it would be odd to exclude typical guardianships of minors. However, the drafting committee should avoid issues related to juvenile delinquency and other areas that are too far afield. The JEB raised a number of anecdotal scenarios, including people invoking guardianship to get child into a better school district, single mothers with chronic illness invoking guardianship during prolonged periods of medical treatment, and grandparents becoming guardians of grandchildren with deceased parents.

##### Enforceability of Unilateral Waivers under the Uniform Premarital and Marital Agreement Act (UPMAA) and the Uniform Probate Code (UPC)

The UPMAA does not address unilateral waivers. However, there is some interest in the probate community in having the UPMAA amended to clarify its stance on unilateral waivers. Without this clarification, some argue, the act creates an unintended loophole. The consensus of the JEB is to recommend that the UPC be amended to clarify that the unilateral waivers need to comply with the requirements of the UPMAA, except for the joint signature requirement.

## **Proposal for New ULC Study Committees**

### **Uniform Equitable Distribution Jurisdiction Act**

Professor Tom Oldham proposes a uniform law be created to unify current family law jurisdiction rules in order to increase the likelihood that all matters will be heard in one forum that has a substantial relationship with the parties. This would create less room for forum shopping and related injustices. However, some practitioners currently rely on forum shopping when advantageous to their clients. Eliminating this practice would be a big change, particularly in cases involving high net worth clients with multiple homes, where transient personal jurisdiction is more easily obtained. The JEB considered whether the solution to this issue would be focused on choice of law reforms.

The consensus of the JEB is to take the proposal under advisement. The JEB recognizes that Professor Oldham's proposal is very broad. The JEB will ask Professor Oldham to consider narrowing his proposal and providing more clarification on transient jurisdiction. Chair Atwood will follow-up with Professor Oldham.

### **Cohabitants' rights**

A 2013 proposal submitted by Reporter Elrod did not receive approval from the Committee on Scope and Program. However, there is continued support for such a project. The JEB acknowledges a growing population of unmarried couples and recognizes that it may be appropriate timing to recommend a study committee be formed to look into drafting a uniform act on this topic.

Several issues were discussed including the recognition that unmarried cohabitant may want the option of not incurring obligations, the recognition that cohabitating couple would need to be distinguished from roommates, the correlation between level of affluence and the decision not to marry but cohabit, and delineation of cohabitants' rights as distinct from common law marriage.

Reporter Elrod will prepare a proposal to the ULC Committee on Scope and Program advocating for the formation of a study committee to consider the feasibility of a uniform law addressing this topic. (The JEB will most likely submit this proposal for the Committee on Scope and Program's July meeting.)

The JEB considered an article about marital status discrimination by Professor Courtney Joslin looking at the growing number of unmarried couples the moral condemnation and stigmas that attach.

### **Interstate Sharing of Putative Father Registry Data**

A Joint Resolution recently passed by the Utah Legislature urges the Interstate Sharing of Putative Father Registry Information. This Joint Resolution was forwarded to the ULC Committee on Scope and Program for the purpose of determining whether Scope should recommend further research or review on the particular topic. After discussion, the Committee on Scope and Program referred the proposal to the JEB-UFL for further review, with the request that the JEB report back its findings at the January 2016 meeting of Scope. The proposal has also been referred to the Study Committee to Revise the Uniform Parentage Act for the purpose of considering this issue for possible inclusion in the Revised Act.

Professor Courtney Joslin is the recently appointed reporter for the Study Committee to Revise the Uniform Parentage Act. She will bring this up at the Committee's next meeting. The JEB also recommends that Utah consider pursuing this issue with the appropriate federal office. Perhaps this issue could be tied to a Title IV-D mandate.

### Adult Visitation

The Catherine Falk Organization submitted to the Committee on Scope and Program a proposal to appoint a study committee to study the feasibility of a state law which would create a legal process for the adult children of parents to petition the courts for visitation in situations where no conservatorship exists and the caretaker of the parent is denying visitation. The JEB agreed that this proposal should be referred to the Drafting Committee to Revise the Uniform Guardianship and Protective Proceedings Act to consider possible inclusion of this issue in the Revised Act

### Post-majority Support for Children

A few states have laws permitting more than the basic child support required in a typical divorce or paternity case by providing for college tuition support in certain cases. However, the continuation of financial support into a child's adulthood remains controversial. The JEB considers this a legitimate issue and will keep an eye on it. However, it did not find a strong basis for recommending a study committee at this time.

### Notable Cases on Uniform Family Laws

Professor Courtney Joslin referenced a case in Alabama that may go to the Supreme Court. In this case, two women in a long term relationship had children through donor insemination. The children were adopted by the non-biological mother in Georgia. When the relationship ended, the biological mother sought to prevent the non-biological mother from seeing the children, arguing that the adoption was invalid in Alabama, where the visitation was being sought. More information on this case is available here: <http://www.nclrights.org/cases-and-policy/cases-and-advocacy/case-e-l-v-v-l/>

Professor Joslin recommends that the JEB monitor and perhaps weigh-in with an amicus brief.

### Other Updates

#### American Law Institute Revision of the Restatement of the Law, Children and the Law

Chair Atwood will be a liaison member of the consultative group for the Restatement of Children and the Law. She will keep the JEB updated on the progress of this committee.

#### Study Committee on Model Equal Rights Act

Harry Tindall is chairing the ULC Study Committee on Model Equal Rights Act. The committee will consider the need for and feasibility of model state legislation on a comprehensive equal rights act. John McCain has pushed for equality in employment. Congress has not acted.

### The meeting was adjourned at 4:00 p.m.