



MEMORANDUM

To: Joint Editorial Board for Uniform Trust and Estate Acts

From: Ben Orzeske
ULC Chief Counsel and Staff Liaison to the JEB-UTEA

Re: Minutes from November 30-December 1, 2018 Meeting; Chicago, Illinois
FINAL – APPROVED APRIL 26, 2019

The meeting was called to order on Friday, November 30, at 9:00 a.m. by Chair Bruce Stone. Others present were Molly Ackerly (ULC Division Chair), Turney Berry, David English, Mary Louise Fellows, Thomas Gallanis (JEB Executive Director), Shirley Kovar, John Langbein, Carlyn McCaffrey, Kevin Millard, Pam Schneider, Robert Sitkoff, Susan Snyder (Observer), James Wade, and Suzanne Brown Walsh.

1. **Approval of Minutes.** The Board unanimously approved the draft minutes from the Spring 2018 meeting.
2. **Resolution Honoring Retiring Board Members.** The Board unanimously approved the following resolution:

The Joint Editorial Board for Uniform Trust and Estate Acts, by resolution adopted November 30, 2018, gratefully recognizes the distinguished and devoted service of Kevin D. Millard and Martha T. Starkey to this Board and to the Uniform Law Commission, their expertise in the law of trusts and estates, and the wisdom, sound judgment, and genuine collegiality they have brought to the deliberations of this Board.

3. **Uniform Directed Trust Act.** Prof. Sitkoff asked the Board for approval to work with the ULC on a formatting amendment to the comment to UDTA § 6. The proposed amendment to the list of sample powers of direction would move the indented bullets left, to a level flush with the other bulleted items to clarify that the indented items were not intended as a subset of the first bulleted item in the list. The Board approved his request. Action Item: Mr. Sitkoff will work directly with ULC staff to implement the technical amendment.
4. **Proposed Conforming Amendments to the Uniform Probate Code in Light of the Uniform Parentage Act (2017).** The Board reviewed a set of proposed conforming amendments drafted by a subcommittee consisting of Prof. English, Prof. Fellows, and Prof. Gallanis. Members provided feedback that will be incorporated into the next draft to be

considered at the Spring 2019 meeting for possible approval. Action Item: The subcommittee will draft a revised set of amendments for consideration at the April 2019 Board meeting.

After a break for lunch, Prof. Sitkoff left the meeting and Benjamin Orzeske (ULC Staff Liaison) joined the group.

5. **Gender-Neutral Amendments to UPC Articles 3 and 4.** Prof. English noted that UPC Articles 3 and 4 have never been amended to eliminate gender-specific language. Action Item: Prof. English will submit a set of gender-neutral amendments for consideration at the Spring JEB meeting and possible submission to the ULC with the set of Conforming Amendments.
6. **Status Report: Tribal Prbate Code.** Prof. English said the drafting committee last met in person in April 2017 and has since met a few times by phone. He estimated it would take a few more conference calls before the act is finished, and the act was not likely to be finished in time for the Spring 2019 Board meeting.
7. **Status Report: Economic Rights of Unmarried Cohabitants.** Prof. Langbein reported that the drafting committee's first meeting had been scheduled for Spring 2019. He further reported that the initial proposal for this project preceded the U.S. Supreme Court's *Obergefell* decision legalizing same-sex marriage, and that the rationale for the project would have to change.
8. **Conflict of Laws.** Professors Kermit Roosevelt and Jeffrey Schoenblum joined the meeting by telephone. Prof. Roosevelt provided an update of the ALI project to revise the Restatement of Conflict of Laws, reporting that the project was likely to continue for at least the next four years. Prof. Schoenblum outlined some of the issues affecting the nexus of trust and estate law with conflict-of-law principles:
 - Cross-border trusts are prevalent;
 - It is unclear which type of "contact" with a state is most significant for the purpose of determining the governing law;
 - "Principal place of administration" is not defined;
 - "Most significant relationship" is based on hard-to-weigh factors;
 - Rules for domestic asset-protection trusts vary widely as states compete for trust business by enacting permissive statutes.

Prof. Schoenblum noted that a uniform state law would be useful because trust drafters need ex-ante rules. Without clarification, it is impossible to determine whether individuals can create private law through the use of governing law clauses. Prof. Gallanis asked whether Prof. Schoenblum was willing to assist with drafting a proposal for a new uniform law on this subject, and Prof. Schoenblum said he would. Action Item: Prof. Gallanis will organize a subcommittee of the JEB to explore the conflict-of-laws issues and will include Prof. Schoenblum in the group discussions.

9. **Status Report: Incorporation of the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act into the UPC.** Prof. English reported he had just received a draft set of proposed amendments to UGCOPAA from Mr. Orzeske, and would review them prior to the Spring 2019 Board meeting. Action Item: Prof. English to review draft amendments to UGCOPAA for inclusion in the UPC and report to the Board at its Spring 2019 meeting.
10. **Estate Tax Apportionment.** Ms. McCaffrey, Ms. Schneider, and Mr. Berry reported a very small project to amend the UTEAA is possible. Their subcommittee will prepare a draft amendment for the board's consideration. Action Item: Mr. Berry and Ms. McCaffrey will prepare draft amendments to the Uniform Estate Tax Apportionment Act for consideration at the Spring 2019 Board meeting.

The Board adjourned at 5:00 p.m. and reconvened at 8:30 a.m. December 1, 2018.

11. **Electronic Wills.** One more drafting meeting is scheduled before the draft act is read for approval at the ULC 2019 Annual Meeting. Ms. Walsh reviewed the remaining issues, including revocation by act, interstate practice and recognition, and received useful input from the Board.
12. **Management of Funds Raised through Crowdfunding Efforts.** Mr. Berry reported that the committee had met and submitted a rough draft but is still making some fundamental policy decisions.
13. **American Bankers Association Proposal to Amend UTC § 802.** The Board reviewed the latest proposal received and determined more information was needed. Specifically, the Board requested additional information from the banking community about what types of proprietary investments banks are selling, and to whom. Mr. Stone expressed reservations about the proposed language, stating it could encourage small local banks to affiliate with a broker-dealer in an effort to generate revenue. The Board agreed to ask for more detailed information. The Board discussed whether the time was right to recommend drafting a broader package of UTC amendments to address other issues identified. Action Item: Mr. Orzeske will work with Mr. Millard, Mr. Stone, and others to compile a list of issues for the Spring 2019 Board meeting. Action Item: Ms. Snyder will invite members of the Trust Counsel Committee to join the Board for an in-depth discussion at its Spring 2019 meeting.
14. **Disposition of Community Property Rights at Death.** The Board responded to a request from the ULC Committee on Scope and Program as to whether the Board's recommendation to revise this act is still valid. The Board confirmed its recommendation, noting that the amendments would be a minor drafting project that could be accomplished by a drafting committee meeting by phone, or by a subcommittee of the Board. Action Item: Prof. Gallanis will convey the Board's recommendation to the ULC Committee on Scope and Program.
15. **Uniform Custodial Trust Act.** The Board responded to a request from the Committee to

Review ULC Acts by confirming the Uniform Custodial Trust Act remains relevant and should be retained in its current form as a uniform act recommended for enactment by the states. Action Item: Prof. Gallanis will convey the Board's recommendation to the Committee to Review ULC Acts.

- 16. Proposed Uniform Act on Blind Trusts.** The Board responded to a request from the Chair of the ULC Committee on Scope and Program to consider whether a future project to draft a uniform or model law governing blind trusts for elected officials. Prof. English expressed skepticism about the prospect for uniformity because the project could become mired in political issues. Ms. Snyder noted a model form would be useful for states. Mr. Berry said a study committee could review federal and state government ethics rules to determine whether a uniform or model act is feasible. Ms. Ackerly thought a project could take the form of amendments to the UTC, noting specific provisions that did not apply to blind trusts for government officials. Action Item: Mr. Gallanis will convey the Board's input to the ULC Committee on Scope and Program.
- 17. Proposed Amendment to UPC § 2-702.** The Board reviewed an article by Prof. Adam Hirsh suggesting an amendment to UPC § 2-702, which creates a rule of construction that an individual who is not shown by clear and convincing evidence to have survived an event by 120 hours is deemed to have predeceased the event for probate purposes. The article reviewed the Duke case in which a common-disaster clause in a holographic will was not triggered because the testator and his spouse died five-years apart. The Board reached a consensus that the problem described in the article was caused by the testator's drafting error. The Board determined the issue was adequately covered by existing law on reformation to correct mistakes and was properly resolved by the court. Therefore, the Board declined to recommend a new rule of construction to correct mistakes of this sort.
- 18. New Liaison Members.** The Board discussed appointing additional liaison members but deferred making a decision to a future meeting.
- 19. Think Tank.** Mr. Berry asked whether the Board should consider recommending a project to improve the acceptance of powers of attorney. Mr. Orzeske stated the Uniform Power of Attorney Act contained provisions intended to encourage acceptance, but Ms. Walsh reported the UPOAA provisions were insufficient. Mr. Orzeske also reported opposition to the UPOAA acceptance provisions from state bankers' associations. Ms. Snyder agreed to raise the issue at the next meeting of the American Bankers Association's Trust Counsel Committee.

The Board adjourned at approximately 12:00 p.m.

Respectfully submitted,
Benjamin Orzeske