

**ANNUAL MEETING  
OF THE COMMITTEE ON SCOPE AND PROGRAM**

**UNIFORM LAW COMMISSION**

**July 14, and July 15, 2012  
Nashville, Tennessee**

**Minutes**

The meeting of the Committee on Scope and Program was convened at 9:00 am on Saturday, July 14, 2012, and again at 8:30 am on Sunday, July 15, 2012, at the Loews Vanderbilt Hotel in Nashville, Tennessee, by Chair Richard T. Cassidy. Committee members Tom Bolt, James C. McKay, Jr., Battle R. Robinson, David S. Walker, Suzanne Brown Walsh, and Terry J. Care were present. Also present were Michael Houghton, President, and Harriet Lansing, Chair of the Executive Committee. Staff members present included John A. Sebert, Executive Director, and Katie Robinson, Deputy Legislative Director and Communications Officer. Also present was Peter J.M. Lown of the Uniform Law Conference of Canada. Attending for a portion of the meeting were Ed Smith, Lee McCorkle, Dale Higer, Fred Miller, Bob Tennesen, Bill Henning, Gail Hagerty, David English, David Biklen, Stan Kent, Rodney Satterwhite, Gene Hennig, Harry Haynsworth, Jack McAvoy, Tom Hemmendinger, Steve Frost, Barbara Atwood, Harry Tindall, Frederick Stamp, and Jack Davies.

Chair Cassidy welcomed the committee and discussed the agenda for the meeting. Upon a motion duly made, the minutes from the January 2012 meeting were amended to add the word “closely” on page 8 to reflect the vote on the resolution for the study committee on Recognition and Portability of Professional and Occupational Licenses of Military Spouses so that it reads, “After discussion, the Committee on Scope and Program approved, by a closely divided vote, the following resolution...”; the minutes were then unanimously approved.

**Study Committee Reports**

- Study Committee on **Model Tribal Legislation on Probate Transfers of Interests in Real Property** (*Dale Higer, Chair*) – Scope Liaison Jim McKay

Commissioners Dale Higer, David English, and Fred Miller appeared before Scope to report on the progress of the study committee. The study committee continues to solicit support for the project from Indian Tribes and Tribal organizations. To date, letters of support have been received from a total of seven Indian tribes, including the Crow Tribe Executive Branch. Official support is also expected from the Inter Tribal Monitoring Association (ITMA). The committee requests that it be continued, and requests that Dale Higer and David English be authorized to attend and participate in the “probate training” session at the ITMA fall conference to better define the issues that this project might undertake.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Article 36 of Vienna Convention**  
(*Grant Callow, Chair*) – Scope Liaison Battle Robinson

Executive Director Sebert reported that the study committee, as directed by Scope, has had discussions with Senator Leahy’s staff regarding his proposed federal legislation, S. 1194, known as the Consular Notification Compliance Act of 2011 (“CNCA”). The CNCA would have preempted any state law on this topic. But it was recently learned that the issue of federal preemption by the CNCA is no longer an issue, because Section 3, the section that created the federal preemption issues concerning possible state legislation on the subject, was removed from the CNCA when it was incorporated into the Senate Appropriations Committee’s version of the FY 2013 Foreign Operations Appropriations bill. Because potentially preemptive federal legislation is no longer pending, and, it appears, is unlikely to be re-introduced, the committee requests that it continue its work. The committee hopes to submit a report to Scope and Program with final recommendations at the January 2013 Midyear Meeting.

After discussion, the Committee on Scope and Program determined that the Study Committee be continued, and directs that the committee submit a final report at the January 2013 Midyear Meeting of Scope.

- Study Committee on **Relocation of Easements**  
(*Rodney Satterwhite, Chair*) – Scope Liaison Tom Bolt

Commissioner Satterwhite appeared before Scope to report on the progress of the study committee. The study committee held a stakeholders meeting in the spring and, based on that meeting and a subsequent meeting of the study committee, a majority of the study committee (by vote of 7-2 and one abstention) recommends that a drafting committee be appointed, but that any act exclude easements that are held by a public utility.

After discussion, the Committee on Scope and Program recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Relocation of Easements be discharged with a letter of thanks to the committee.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Eyewitness Identification Procedures**  
(*David Biklen, Chair*) – Scope Liaison Jim McKay

Commissioner Biklen appeared before Scope to report on the progress of the study committee. The study committee held a stakeholders meeting in the spring, and based on that meeting and the work and research of the study committee, the committee recommends that a drafting committee be appointed.

After discussion, the Committee on Scope and Program, by a closely divided vote, recommended that the study committee be discharged.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the Study Committee on Eyewitness Identification Procedures be discharged with a letter of thanks to the committee.**

*At its meeting of July 17, 2012, the Executive Committee did not approve this resolution, and instead approved this revised resolution:*

**RESOLVED, that the Executive Committee approved continuing the Study Committee on Eyewitness Identification Procedures, and requested that the Study Committee seek the views of the law enforcement community and the Conference of Chief Justices concerning this project.**

*[Commissioner Cassidy asked that the minutes note that he abstained from this vote.]*

- Study Committee on **Appointment and Powers of Real Estate Receivers**  
(*Tom Hemmendinger, Chair*) – Scope Liaison Suzy Walsh

Commissioner Hemmendinger appeared before Scope to report on the progress of the study committee and recent discussions with important stakeholders, including the ABA's Business Law Section, American College of Real Estate Lawyers, American College of Mortgage Attorneys, the Association of Commercial Finance Attorneys, and various other practitioners and judges. Based on the positive reaction from stakeholders, the study committee recommends that a drafting committee be appointed. The JEB for Uniform Real Property Acts also supports the recommendation to go to drafting.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed to draft a model act on this topic.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on a Model Act on the**

**Appointment and Powers of Real Estate Receivers be formed, and that the act not cover receivers appointed with respect to owner-occupied residences.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Series of Unincorporated Business Entities**  
(*Steve Frost, Chair*) – Scope Liaison David Walker

Commissioner Frost appeared before Scope to report on the progress of the study committee and its final recommendation that a drafting committee be formed to add series provisions to some or all of the uniform unincorporated organization acts other than the Uniform Statutory Trust Entity Act. The JEB for Uniform Unincorporated Organization Acts also supports the recommendation to go to drafting.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on Series of Unincorporated Business Entities be formed, that the committee be authorized to draft series provisions that can be added to some or all of the uniform unincorporated business organization acts other than the Uniform Statutory Trust Entity Act, and that the committee be authorized to draft revisions to the series provisions in USTEPA if it believes such revisions are necessary.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Choice of Law for Fraudulent Transfers**  
(*Ed Smith, Chair*) – Scope Liaison David Walker

Commissioner Smith appeared before Scope to report on the progress of the study committee and reported that, at Scope's request, the committee had looked at the issue of whether or not the entire Uniform Fraudulent Transfer Act (UFTA) should be revised. The study committee does not support a full revision. The committee reaffirms its previous recommendation to amend the UFTA on certain choice of law and burden of proof issues referred to in its January report. The study committee also recommends that the drafting committee consider a limited number of additional possible revisions to the UFTA and also consider any necessary revisions to the official comments of UFTA.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on Amendments to the Uniform Fraudulent Transfer Act be formed, and that the drafting committee be authorized to prepare amendments to the Uniform Fraudulent Transfer Act that address (a) choice of law for fraudulent transfers, (b) presumptions and burdens of proof for fraudulent transfers, (c) who receives “reasonably equivalent value” under UFTA Section 8 (a), (d) asset freezing orders, and (e) the consistency of UFTA with ULC unincorporated business organization acts. The drafting committee is also authorized to draft, for approval by the Executive Committee, revisions to the comments to other provisions of the Uniform Fraudulent Transfer Act.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- **Joint ULC/ULC of Canada Study Committee on Interjurisdictional Recognition of Life Planning Documents**  
*(David English, Chair) – Scope Liaison Suzy Walsh*

Commissioner English appeared before Scope to report on the progress of the study committee, which is a joint committee with members from ULC and ULC of Canada. The committee has met by conference call, and David English has met with stakeholders at the annual meeting of the National Academy of Elder Law Attorneys this spring. Based on these calls and the NAELA meeting, the committee recommends that a drafting committee be appointed to develop principles that would include (1) a provision validating documents executed elsewhere; (2) a provision specifying choice of law; (3) a provision specifying circumstances under which acceptance would be mandatory; and (4) a provision that would respect restrictions imposed by the implementing state.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Joint Drafting Committee with the Uniform Law Conference of Canada be formed on Inter-jurisdictional Recognition of Advance Planning Documents, and that the Joint Committee draft principles that will guide the drafting of uniform legislation for enactment in the United States and in Canada that provides for cross-border recognition of documents such as powers of attorney for both property and health care, health care instructions, and other documents (such as instructions concerning living arrangements) as appropriate. The Scope and Program Committee further recommends that the ULC members of the Joint**

**Committee be authorized to draft uniform U.S. legislation on these matters, and that the Joint Committee not be authorized to draft principles or statutory provisions concerning the recognition of provisions for trusts or guardianships.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee to **Amend the Uniform Athlete Agents Act**  
(*Dale Higer, Chair*) – Scope Liaison Tom Bolt

Commissioner Higer appeared before Scope to report on the progress of the study committee. The committee has reviewed all the issues contained in the original proposal to Scope, and has agreed that all the issues should be considered further. The committee requests that a stakeholders meeting with the NCAA and other stakeholders be authorized this fall so that the scope of any drafting project can be defined.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Criminal Records Access and Accuracy**  
(*Bob Tennessen, Chair*) – Scope Liaison David Walker

Commissioner Tennessen appeared before Scope to report on the progress of the study committee. The study committee will begin work on an issues memorandum, and requests approval of a stakeholders meeting at a time to be determined later, to more fully examine the scope of a potential drafting project on these issues.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Family Law Arbitration**  
(*Barbara Atwood, Chair*) – Scope Liaison Battle Robinson

Commissioner Atwood appeared before Scope to report on the progress of the study committee. The committee has begun working on identifying statutes or procedural rules, including the AAML Model Act, to consider as a possible model as well as identifying appropriate stakeholders.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Fiduciary Access to Digital Information**  
(*Suzy Walsh, Chair*) – Scope Liaison Tom Bolt

Commissioner Walsh reported that the committee has held three conference calls, has researched relevant state statutes on this issue, and has identified stakeholders to contact. The committee recommends that a drafting committee be appointed. More specifically, the study committee recommends that a drafting committee be authorized to draft an act that vests fiduciaries with at least the following authority: (1) to manage and distribute digital assets; (2) to copy or delete digital assets; and (3) to access digital assets, including bypassing any authentication method or decrypting data.

After discussion, the Committee on Scope and Program recommended that a drafting committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a drafting committee on Fiduciary Access to Digital Assets be formed, that the committee be authorized to draft a free-standing act and/or amendments to ULC acts, such as the Uniform Probate Code, the Uniform Trust Code, the Uniform Guardianship and Protective Proceedings Act, and the Uniform Power of Attorney Act, and that the act be drafted so as to vest fiduciaries with at least the authority to manage and distribute digital assets, copy or delete digital assets, and access digital assets.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Portability and Recognition of Professional and Occupational Licenses of Military Spouses**  
(*Paul Kurtz, Chair*) – Scope Liaison Terry Care

Executive Director Sebert reported that the committee will work to identify a list of issues that should be addressed by any uniform state legislation in this area. The committee expects that a stakeholders meeting during the first half of 2013 will be necessary.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

- Study Committee on **Recognition of Canadian Domestic Violence Protection Orders**  
(*Gail Hagerty, Chair*) – Scope Liaison Battle Robinson

Commissioner Hagerty appeared before Scope to report on the progress of the study committee. The committee requests that its scope be expanded to include recognition of foreign

domestic violence protection orders, rather than limiting the study to only Canadian domestic violence protection orders.

After discussion, the Committee on Scope and Program determined that the study committee be continued, and recommended that its scope be expanded as requested.

The Committee on Scope and Program then approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the charge to the Study Committee on Recognition of Canadian Domestic Violence Protection Orders be expanded to deal with recognition of foreign domestic violence protection orders, and that its name be changed to reflect its new scope.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Trust Decanting**  
(*Stan Kent, Chair*) – Scope Liaison Suzy Walsh

Commissioner Kent appeared before Scope to report on the progress of the study committee. The committee requests that it continue its work, and monitor the progress of the IRS in developing guidance as to the income and transfer tax consequences of decanting so that settlors, practitioners, and fiduciaries acting in accordance with a uniform act will not attract unintended adverse tax results.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

The Committee on Scope and Program then approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a reporter be assigned to the Study Committee on Trust Decanting, that the study committee develop a list of issues that the study committee feels is appropriate to be addressed by any act on this subject, and that the study committee report back to Scope and Program as soon as appropriate.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Study Committee on **Wage Garnishment**  
(*Bill Henning, Chair*) – Scope Liaison David Walker

Commissioner Henning appeared before Scope to report on the progress of the study committee. The committee is currently identifying potential observers for the project. Potential



stakeholders include: APA, AFL-CIO, National Association of Manufacturers, National Chambers of Commerce, National Association of Retail Credit Attorneys, and Commercial Law League of America. Committee has not yet determined whether a stakeholders meeting will be necessary.

After discussion, the Committee on Scope and Program determined that the study committee be continued.

### **Joint Editorial Board Written Reports and Recommendations**

- **JEB – Uniform Family Law**  
(*Harry Tindall, Chair*) – Scope Liaison Battle Robinson

There was no proposal from the JEB.

- **JEB – Uniform Trust and Estate Acts**  
(*David English, Executive Director*) – Scope Liaison Suzy Walsh

There was no proposal from the JEB.

- **JEB – Uniform Real Property Acts**  
(*Wilson Freyermuth, Executive Director*) – Scope Liaison Tom Bolt

There was no proposal from the JEB.

- **JEB – International Law**  
(*Michael Sullivan, Chair*) – Scope Liaison Jim McKay

There was no proposal from the JEB.

- **JEB – Unincorporated Organization Acts**  
(*Steve Frost, Chair*) – Scope Liaison David Walker

There was no proposal from the JEB.

- **PEB – Uniform Commercial Code**  
(*John Sebert, Chair*) – Scope Liaison Terry Care

There was no proposal from the PEB.

### **New Business**

- **Proposal – Create Model Act on Juvenile Adjudicative Competence**  
(Terence M. Brennen, ABA Criminal Justice Section) Scope Liaison Jim McKay

Commissioner McKay reported on this proposal, which addresses the issue of a due process right to competency for youth facing criminal accusations in juvenile delinquency proceedings. Adult defendants have the right to be found mentally competent before facing a criminal trial. Determining competency in minors can be complicated by lack of maturity. At this time, only Florida and Arkansas have statutes that recognize age and immaturity as factors to be considered in determining competency of juveniles. This proposal suggests that a Model Act would address this problem by providing states with guidance in creating state law that allows for consideration of a young person's ability to understand their case, consult with an attorney, and participate in their defense.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- Proposal – **Draft a Trust Protector Act**  
(Mark Cohen, Non-Tax Considerations Group, ABA RPTE) Scope Liaison Suzy Walsh

Commissioner Walsh reported on this proposal to draft a Trust Protector Act. The issue of trust protectors has been discussed by the JEB on Uniform Trust and Estate Acts. While the JEB/UTEA believes that the issue of trust protectors should receive further study, the JEB itself is not currently in a position to undertake this work. At its fall 2011 meeting, the JEB/UTEA recommended that a study committee be appointed. At that time, Scope concluded to take no action, and instead referred the matter back to the JEB with the suggestion that the JEB continue to monitor the issue.

After discussion, the Committee on Scope and Program recommended that a study committee be appointed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on Trust Protectors be formed.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Proposal – **Draft State Law on Visible Identification of Off-Road Vehicles**  
(Shannon Raborn, Director, Responsible Trails America) Scope Liaison Terry Care

Ms. Raborn reported via conference call on this proposal to draft an act that would help promote a standard system across the country for visible identification and titling provisions of off-road vehicles. While registration programs are common across the country, only 12 states require large, visible identification for ORVs such as a license plate or large decal. Any act on this topic should create a standard location on the vehicle for mounting plates or decals,

preferably on the front and rear, to allow law enforcement to more quickly locate the identification.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- Proposal – **Draft State Law on Evidence of Domestic Violence Abuse in Criminal Justice Proceedings** (Commissioner Howard Swibel) Scope Liaison Battle Robinson

Commissioner Swibel reported on this proposal to draft a uniform law which would allow an inmate to file a writ of habeas corpus when evidence of abuse was not presented at the trial court proceedings, and had such evidence been received, there is a reasonable probability that the results of the proceeding would have been different.

After discussion, the Committee on Scope and Program concluded to take no action at this time.

- Proposal – **Draft State Law on Smart Grid / Electric Vehicle Charging Stations** (Hal Emalfarb, National Coalition for Uniform Smart Grid Laws & Policies)

Commissioner Swibel reported on this proposal to draft legislation for a uniform smart grid law to ensure cost-effective service for utility customers.

After discussion, the Committee on Scope and Program recommended that Mr. Emalfarb be asked to return to Scope with a more thorough proposal that more closely addresses the Scope guidelines, and that this proposal remain on the agenda for the January 2013 meeting of Scope.

### **Other Business**

- Proposal – **Create Model Veterans' Court Act** (Commissioner Harry Tindall) Scope Liaison Battle Robinson

Commissioner Tindall reported on this proposal to create a Model Veterans' Court Act. Veterans courts are meant to divert cases involving veterans to a specialized court set up to deal with veterans' issues, and to steer those veterans towards treatment rather than incarceration. Executive Director Sebert reported on his discussions with Kay Farley, Executive Director of the National Center for State Courts, who said that there is a lot of interest among the judicial organizations in veterans' courts. Ms. Farley also appeared before Scope to reiterate that there is interest from NCSC and that if the ULC established a study or drafting committee, the NCSC would participate.

After discussion, the Committee on Scope and Program recommended that a study committee be formed.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that a Study Committee on a Model Veterans Court Act be formed.**

*On July 17, 2012, the Executive Committee approved this resolution.*

- Report: **Uniform Law Conference of Canada**

Peter Lown of the Uniform Law Conference of Canada reviewed for the committee the current and potential future projects of the Uniform Law Conference of Canada.

- **Committee to Review ULC Acts**  
*(Frederick Stamp, Chair)*

Commissioner Stamp reported on the recommendations from the Committee to Review ULC Acts.

The Committee on Scope and Program approved the following resolution:

**RESOLVED, that the Committee on Scope and Program recommends to the Executive Committee that the June 1, 2012, recommendations from the Committee to Review ULC Acts be approved with regard to the following:**

- **List the Model Land Sales Practices Act (1966) as “Obsolete.”**
- **List the Model Minor Student Capacity to Borrow Act (1969) as “Obsolete.”**
- **List the Uniform Premarital Agreement Act (1983) as “Superseded” contingent upon the approval of the Uniform Premarital and Marital Agreement Act in 2012.**

*On July 17, 2012, the Executive Committee approved this resolution.*

After discussion, the Committee on Scope and Program approved the recommendations from the Committee to Review ULC Acts with respect to the following acts:

1. Uniform Certification of Questions of Law Act: Scope requests that the ULC Legislative staff undertake a survey to determine if the act has had any adoptions by court rule, and make the results of that survey available to the committee at its next meeting.
2. Uniform Disposition of Community Property Rights at Death Act: Scope requests that this Act be referred to both the Joint Editorial Board for Uniform Trust and Estate Acts and the Joint Editorial Board for Uniform Family Law for the JEBs’ review and recommendation concerning whether this act should be updated.

3. Model Anti-Discrimination Act: Scope had earlier asked that this Act be referred to Commissioner Mike Ferry for his review and recommendation. Scope requests that Commissioner Ferry submit his recommendation as soon as feasible.
4. Model Mandatory Disposition of Detainers Act: Scope requests that this Act be forwarded to ULC Legislative Counsel Eric Fish and Commissioner Rich Cassidy, chair of the drafting committee for the Uniform Collateral Consequences of Conviction Act, for their review and recommendation.

The meeting of the Committee on Scope and Program was then adjourned.