

LETTER FROM THE PRESIDENT

Howard J. Swibel



There have been a number of new developments within the Conference since we all last met in Hilton Head for our 115th Annual Meeting.

As many of you already know, we have plans underway to expand the Conference staff. There are currently only ten full time employees in the Conference headquarters office in Chicago - this is not enough staff support to do all that the Conference needs to do. We are focusing right now on strengthening and expanding our Chicago staff.

Let me give you a little perspective. In the 2006 legislative year, we recorded 161 introductions and 75 enactments of uniform and model acts. There were 46 different acts introduced in the state legislatures. We have only two and a half staff attorneys dedicated to the legislative program. We just can't keep up. We have many commissioners who work very hard on the legislative program, but they need help, they need support. More staff devoted to the legislative program will enable us to strengthen our enactment activities.

For this reason, we will be hiring a new legislative attorney to join our staff. We hope to have someone hired by November. This new attorney will hit the ground running, because we already have projects lined up for the 2007 legislative year that require dedicated work, includ-

ing the new Uniform Anatomical Gift Act, the new Uniform Emergency Volunteer Health Practitioners Act, and the new Uniform Prudent Management of Institutional Funds Act. The reason for expanding our staff is perfectly clear. We want to enable our commissioners to achieve greater results in their work.

We are finally getting the opportunity - because we now have the available resources - to implement a recommendation that our Millennium Committee made to the Conference six years ago: that we hire a full-time in-house Executive Director. We have begun our nationwide search for this new position. As the demands on our legislative program have grown, so too have the demands on the Executive Director grown in proportion to the increase in Conference activities.

Historically, the Executive Director has been a law professor serving in a part-time capacity. But the current responsibilities make it impossible for this position to be part-time anymore. In addition to overseeing all of our drafting committees (and there are currently 18 drafting committees), our Executive Director has been heavily involved in our international efforts, has served as liaison to other organizations such as the ALI and the ABA, has participated in our outreach to other organizations (such as the National Congress of American Indians and the U.S. State Department) as well as several other parts of the federal government, and has been an integral part of our increased

efforts to garner additional financial resources.

Our new Executive Director will have all of these above-mentioned duties, as well as the responsibility of supervising the staff, overseeing fundraising for discreet projects, including the supervision of grant writing, assisting advocacy for the adoption of Conference acts in the states, serving as advisor to the Executive Committee, and providing the Conference with continuity from one administration to the next.

Before we began our search, we discussed with Bill Henning, our current Executive Director, his possible relocation to Chicago to fill this new position. But because of job and family commitments, that was not feasible. Bill will stay on until our full-time Executive Director is hired and, perhaps, thereafter, on special assignments.

The expansion of our staff is necessary to carry out the Conference's core mission of drafting and enacting uniform acts in a world that is rapidly changing. Our effectiveness is directly linked to how many of our acts become law. A strong and effective staff is not a luxury, it is a requirement. We will keep you apprised of further developments.

Martha Walters, Chair of NCCUSL Executive Committee, Appointed to Oregon Supreme Court



Oregon Commissioner Martha Walters, Chair of the NCCUSL Executive Committee, was recently appointed to the Oregon State Supreme Court. On September 18, 2006, Oregon Governor Ted Kulongoski appointed Martha to fill the vacancy created by the retirement of Justice R. William Riggs, effective September 30, 2006. The term expires in 2008.

At the announcement of the appointment, Governor Kulongoski said, "Ms. Walters is a passionate and dedicated lawyer with an intense intellectual interest in the law. She has a broad spectrum of experience representing individuals, small businesses and government. She comes to this position with a keen intellect, ideal temperament, and an outstanding reputation in the legal community.

"Ms. Walters is an outstanding legal analyst who comes from a unique background, and we are lucky to have her serve on the court. She is a real person who has a sense of what is happening on the ground, and she cares deeply about Oregon, the laws and the people. She has a unique blend of brilliant intellect and deep, down-to-earth compassion for individuals. I am also very pleased to appoint a woman to the Oregon Supreme Court. It is important to have judges of varied backgrounds and experiences. We need to continue to strive to diversify both the bar and bench in Oregon so they better reflect the population they serve."

Gov. Kulongoski's announcement can be found in full at this link: http://governor.oregon.gov/Gov/p2006/press_091806mw.shtml.



Update on the Uniform Emergency Volunteer Health Practitioners Act

The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA) was drafted by NCCUSL in response to the inability of many volunteer medical professionals to aid victims of Hurricanes Katrina and Rita because they were not licensed to practice in the affected states. In the immediate aftermath of the 2005 hurricane season, NCCUSL commissioned a study of the problems regarding interstate recognition of healthcare licenses during emergencies. After meeting with numerous interest groups, NCCUSL concluded that there was an urgent need to fill the existing gaps before another disaster struck. A drafting committee was formed, and that committee presented a draft for consideration at NCCUSL's annual meeting in July. During our own annual meeting, the Conference waived our normal two-meeting rule requirement, and the UEVHPA was approved.

Because it is in the interest of the states and territories to consider this act as quickly as possible, the UEVHPA was submitted to the ABA's House of Delegates for consideration at the ABA annual meeting, rather than waiting, as is usual, for the next ABA midyear meeting.

The resolution endorsing the UEVHPA - co-sponsored by the ABA Health Law Section, the ABA Tort, Trial and Insurance Practice Section, and the ABA State and Local Government Section - was unanimously approved by the ABA House of Delegates.

While we will actively promote the Act in the states, the UEVHPA drafting committee is going back to work to draft provisions on liability, immunity, and workmen's compensation. The drafting committee will next meet October 6-7, 2006, in Arlington, Virginia.

UNIFORM LAW FOUNDATION NEWS

Robert A. Stein, Chair

The Uniform Law Foundation ended the 2005/2006 Campaign Year on June 30, 2006, with an endowment in excess of \$3 million. And there's more good news. This past year also showed record high levels of participation by uniform law commissioners, along with a new and beneficial way for our commissioners to donate to the Foundation.

Commissioners, as always, are the backbone of our gift-giving. More than 120 commissioners contributed to the ULF in the 2005/2006 Campaign Year. This past year we recognized 35 new Fellows (for those that contribute more than \$250 in a given campaign year) and 23 new Benefactor Fellows (for those that contribute more than \$500 in a given campaign year).

Starting this year, the ULF is expanding its donor recognition categories to include Patrons, a new category for those who have given \$1,000 or more in a campaign year. Lifetime Fellows remain for those who have given cumulative gifts of \$10,000 or more to the ULF.

By the end of the NCCUSL Annual Meeting in Hilton Head, 17 states reported 100% participation from all their commissioners. Also, our annual ULF Benefit was another huge success, with more than 280 people attending the benefit on Daufuskie Island.

This past year, NCCUSL launched the "Life Member Charitable Gift Annuity" for our "senior commissioners." This gives commissioners the opportunity to significantly contribute to the Uniform Law Foundation during their lifetime PLUS earn a strong investment rate of return with excellent tax-saving benefits.

The Life Member Charitable Gift Annuity is a vehicle that combines investment objectives (high returns with safety) and tax-saving benefits with the ability to support the Uniform Law Foundation. The IRS requires that at least 10% of the lump sum goes directly to the charity. Most large charities follow a rate of return schedule published by American Council on Gift Charities

There are many benefits of NCCUSL's Life Member CGA:

- can pay more than the prevailing rates for CGAs;

- will re-insure with a highly rated insurance company;
- can provide both single and couple annuity contracts;
- can guarantee better after tax rate of return than either current US Treasury Bonds or Bank CDs (actual rates will depend upon ages of donors and market conditions).

To learn more about the Life Member Charitable Gift Annuity, contact Liz Cunneen in the Chicago office at 312-915-0195, or by email at liz.cunneen@nccusl.org.

I am also pleased to report that the Foundation has made a number of grants to assist NCCUSL with its international drafting efforts. A joint meeting was held last spring between members of the Conference, the Uniform Law Conference of Canada, and the Mexican Center for Uniform Laws, to discuss a joint project to create a Harmonized Legal Framework for Unincorporated Nonprofit Associations in North America. Because the Uniform Law Conference of Canada did not have funds available for the travel expenses of its delegates, a Foundation grant covered the travel expenses for the Canadian delegation to attend this important meeting.

Now our focus turns to launching the 2006/2007 Campaign. Later this fall you will receive our annual appeal and we hope you will consider the ongoing needs of NCCUSL during the traditional season of year-end giving. We also welcome suggestions for contacting law firms and other potential donors that benefit from NCCUSL's efforts and an effective system of uniform laws. Please contact Liz Cunneen in the Chicago office.

I'd like to thank my fellow trustees - Tim Berg, Rhoda Billings, Carl Lisman and Ed Smith - for all the hard work and effort. Thanks also to the ULF liaisons who work in their individual states on behalf of the ULF.

Thank you all for your continuing support and best wishes for the year ahead. We appreciate your participation in support of the Uniform Law Foundation and look forward to another successful campaign in the coming year.

Executive Committee Update

At the annual meeting, a number of decisions were approved by the NCCUSL Executive Committee. Highlights of the meeting include:

Five new drafting committees have been appointed: Drafting Committee on a Business Organization Act; Drafting Committee

on a Transfer on Death for Real Property Act; Drafting Committee on a Collaborative Law Act; Drafting Committee on a Relocation of Children Act; and Drafting Committee on a Regulation of Medical Examiners Act. Three new study commit-

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tees were authorized: Study Committee on the 1996 Hague Convention on the Protection of Children; Study Committee on DNA Evidence; and Study Committee on Revisions to the Uniform Law on Notarial Acts. (See accompanying article for further details.)

The Executive Committee has granted advisory member status under Section 2.9 of the Constitution to Dave P. Stewart (U.S. State Department), Harold S. Burman (U.S. State Department), Elena A. Cappella (American Law Institute), Rob Finlayson (Uniform Law Conference of Canada), Stephanie Martin (Federal Reserve Board), Stephen N. Zack (American Bar Association), and Jorge Sanchez Cordero (Mexican Uniform Law Center).

Amendments to the Uniform Certificate of Title Act were approved. A copy of the amended Final Act is posted on our website archives at <http://www.law.upenn.edu/bll/ulc/ulc.htm>.

The site for the NCCUSL Midyear Meeting was announced: it will be held at the Ritz Carlton Hotel in Pasadena, California, February 2-4, 2007.

The Executive Committee approved the recommendations from the Committee on Review of Conference Acts, designating the Uniform Anatomical Gift Act (1968) (1987), the Uniform Parentage Act (1973), and the Uniform Statutory Form Power of Attorney Act (1998) as "superseded." The Uniform Controlled Substances Act (1990) has been re-designated as a Model Act.

The Study Committees on E-Government and Electronic Payment Systems were discharged.

New Drafting and Study Committees Appointed

At its July 2006 annual meeting in Hilton Head, South Carolina, the Executive Committee of the Conference authorized the appointment of five new drafting committees and three new study committees. These new committees will be appointed shortly.

The five new drafting committees which will begin working on new acts are:

Drafting Committee on Business Organization Act. The purpose of this committee is to draft common provisions of business organization law such as definitions, the mechanics of filings, names of entities, registered agents and registered offices, qualification of foreign entities, administrative powers of the Secretary of State. There may potentially be merger with the Model Entity Transactions Act. Working with an ABA committee, the drafting committee will also consider future expansion of the project.

Drafting Committee on TOD for Real Property Act. This committee will draft an act that will permit real property to be transferred immediately upon death by beneficiary designation, similar to current beneficiary designations now used on securities accounts and life insurance. At least eight states now permit this kind of real estate transfer on death.

Drafting Committee on Collaborative Law Act. This committee will draft an act on collaborative law, a new kind of alternative dispute resolution framework used in many states today in a family law context, i.e., divorce, custody and support proceedings. The committee will also consider whether the act should be limited to family law practice or expanded to other areas of the law such as estate planning.

Drafting Committee on Relocation of Children Act. This committee will

draft an act on the relocation of children from one jurisdiction to another in the context of custody disputes. Relocation involves a parent who wants to move with a child over the objections of the other parent; it is one of the fastest growing kinds of custody litigation in the country.

Drafting Committee on Regulation of Medical Examiners Act. This committee will draft an act regulating state and local forensic examination systems in an effort to improve the current standards. The committee will consider the areas of accreditation and quality assurance programs which play a crucially important role in the criminal justice system.

The three new study committees which will consider a subject for possible future drafting are:

Study Committee on the 1996 Hague Convention on the Protection of Children. This committee will examine, at the request of the U.S. Department of State, whether becoming a party to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded in 1996 under the auspices of the Hague Conference on Private International Law, is in the best interest of the United States and possible mechanisms for its implementation including amendments to the Uniform Child Custody Jurisdiction and Enforcement Act.

Study Committee on DNA Evidence. This committee will review, at the request of the ABA Criminal Justice Section, the potential for a uniform act on DNA evidence. Because investigations and prosecutions of crimes often cross state lines and because states share access

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to their DNA profiles through the national database, uniformity of DNA legislation would help ensure that the information individual states agree to share and the information they are entitled to receive is consistent.

Study Committee on Revisions to the Uniform Law on

Notarial Acts. This study committee will consider the current status of notarial law since the 1982 promulgation of the Uniform Law on Notarial Acts, and determine whether new technologies and needs relating to real estate fraud, homeland security, and immigration fraud warrant a revision of the act.

Eight New Acts Approved at Annual Meeting

At our 115th Annual Meeting in South Carolina, the Conference approved eight new uniform and model acts.

The new **Uniform Anatomical Gift Act** updates the act (which was originally promulgated in 1968 and adopted in every state, then again revised in 1987) in light of changes in federal law and regulations, and related developments in the field of organ donation. Like the prior versions, the new UAGA provides that any individual may make an anatomical gift by signing a document of gift. No witnesses are necessary for this document, and the donor's wishes are not subject to change by others. The revision also expands the number of individuals allowed to consent to make anatomical gifts, and encourages the use of donor registries and provides standards for their operations.

The **Uniform Child Abduction Prevention Act** provides courts with guidelines to follow during custody disputes and divorce proceedings, to help courts identify families at risk for abduction, and to provide methods to prevent the abduction of children.

The new **Uniform Emergency Volunteer Health Practitioners Act** will allow state governments to give reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements. This act was drafted in response to the devastation in the Gulf States from Hurricanes Katrina and Rita, specifically the problem of allowing out-of-state medical professionals to practice in the afflicted areas.

The **Uniform Limited Liability Company Act**, like its predecessor of 1996, permits the formation of limited liability companies (LLCs), which provide the owners with the advantages of both corporate-type limited liability and partnership tax treatment. The new revision preserves the best elements of the original Act; addresses questions that have arisen in practice and in litigation; and offers a modern, updated "second generation" Uniform Limited Liability Company Act.

The **Uniform Power of Attorney Act** revises and replaces the Uniform Durable Power of Attorney Act, last amended in 1987 (also UPC Article 5) and the Uniform Statutory Form Power of Attorney Act of 1988. It provides a simple way for people to

deal with their property by providing a power of attorney that survives the incompetence of the principal. While the act is primarily a set of default rules that may be altered by specific provisions within a power of attorney, the act also contains safeguards for the protection of an incapacitated principal.

The **Uniform Prudent Management of Institutional Funds Act**, like its predecessor, the Uniform Management of Institutional Funds Act, provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions. The new act expressly provides for diversification of assets, pooling of assets, and total return investment, to implement whole portfolio management, bringing the law governing charitable institutions in line with modern investment and expenditure practice.

The **Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act** seeks to improve the representation of children in proceedings directly affecting their custody by clearly defining the roles and responsibilities of children's representatives and by providing guidelines to courts in appointing representatives.

The **Model Registered Agents Act** provides states with one registration procedure for registered agents no matter the kind of business entity represented by the agent. Since almost every state requires an entity created in another jurisdiction to designate a registered agent for service of process and other legal proceedings, this act should simplify registration procedures by providing one registered agent database in each state.

The following acts were also debated for possible final consideration next year: Uniform Statutory Trust Act; Uniform Guardianship Interstate Jurisdiction and Enforcement Act; Model State Administrative Procedures Act; Uniform Cooperative Association Act; Amendments to Uniform Common Interest Ownership Act; Interstate Depositions and Discovery of Documents Act; and Uniform Collateral Sanctions and Disqualifications Act.

The current drafts of all of these acts can be found at NCCUSL's website at www.nccusl.org.