

QUARTERLY REPORT

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Katie Robinson, Editor
Uniform Law Commission

111 N. Wabash Ave., Ste. 1010 Chicago, IL 60602
312-450-6600 www.uniformlaws.org

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Collective Wisdom and Having Fun!

The idea of collective wisdom is not new. Aristotle is thought to have been the first to write about the "wisdom of the crowd" in Politics.

British polymath Sir Francis Galton gave the idea statistical validation after observing a contest at a Plymouth county fair in 1906, in which 800 people estimated the weight of a live ox after it was slaughtered and dressed. According to James Surowiecki, *The Wisdom of Crowds*, (Random House, New York 2004), the vox populi (actually, the median value of all the guesses), 1207 pounds, was within 0.8% of the actual weight ultimately measured by the judges. Recent archival research suggests that the average value was actually identical to the measured weight.

And the idea of collective wisdom remains very current. Social psychologist Jonathan Haidt suggests that "while [w]e should not expect individuals to produce good, open-minded, truth-seeking reasoning,... if you put individuals together in the right way, such that some individuals can use their reasoning powers to disconfirm the claims of others, and all individuals feel some common bond or shared fate that allows them to interact civilly, you can create a group that ends up producing good reasoning as an emergent property of the social system." J. Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* (Pantheon Books, New York 2012) p.105. Haidt goes on to say: "This is why it's so important to have

intellectual and ideological diversity within any group or institution whose goal is to find truth (such as an intelligence agency or a community of scientists) or to produce good public policy (such as a legislature or advisory board). Id.

Does that description remind you of any particular group? As I approach my 23rd consecutive ULC Annual Meeting, and after four years of attending almost every drafting committee meeting, and the end of my two-year term as ULC President, I think it describes us very well indeed.

One thing I learned attending all those drafting committee meetings was to trust the group. Often, I would be approached by an individual member or observer, concerned that a drafting project was headed in the wrong direction. Sometimes I agreed. But even when I did, I tried to sit back and wait. Usually, the direction would change over time, and sometimes it would turn in a better direction than either the person concerned or I had thought about.

I don't point this out to suggest that the ULC is perfect. Perfection is not a human quality. But, as Molly Wood and Kai Ryssdal from the *Make Me Smart* podcast put it, "none of us is as smart as all of us."

If I am right that our group culture is crucial to the excellent work of our individual members, reporters, and observers, we are well advised to protect its strengths. Haidt mentions two qualities that I believe we share and should nurture: the common bonds of our joint commitment to uniformity of state law and our reserves of friendship and mutual respect, and our intellectual and ideological diversity. Breaking bread together helps keep us together.

It turns out that we have much to celebrate and that our celebration supports our work.

Becky and I look forward to working and celebrating with you soon.

See you in San Diego!

Rich Cassidy



2017 Annual Meeting



ON TO SAN DIEGO!

The ULC's 126th Annual Meeting will be held in San Diego, July 14-20, at the U.S. Grant Hotel in downtown San Diego. Although the ULC has met in California many times before, this meeting will mark only the second time we have met in San Diego – the last time being in 1979.

There are some wonderful tours and events planned that will showcase this wonderful city. Just a few of the events that are waiting for you in San Diego include:

- Uniform Law Foundation Annual Gala aboard the USS Midway;
- Land and Sea Tour including San Diego Bay, Old Town, and Balboa Park;
- Behind the Scenes Tour at the world-famous San Diego Zoo;
- Padres vs. Giants Baseball Game at Petco Park;
- Maritime Museum Tour and Sail;
- Gaslamp Wine and Art Walk Tour.

The business agenda is now complete. Acts up for final approval include the Uniform Directed Trust Act; Uniform Regulation of Virtual Currency Businesses Act; Uniform Protected Series Act; Model Veterans Treatment Court Act; Revised Uniform Parentage Act; Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act; and Uniform Criminal Records Accuracy Act.

We'll also be debating drafts on the Non-Parental Child Custody and Visitation Act; Fiduciary Principal and Income Act; Amendments to UCC Articles 1, 3, and 9; and Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

The Legislative Program in San Diego

Once again, all commissioners will be expected to attend one of the scheduled legislative breakfasts (like last year, this year the schedule includes three breakfasts and one lunch) that the Legislative Council will be hosting during our annual meeting in San Diego this summer. There will be time to meet as a delegation to discuss specific legislative plans for 2018.

These legislative sessions are critical to the ULC legislative program. They provide opportunities for state delegations to meet and plan their legislative agendas, obtain answers, get to know the staff and Legislative Council members, learn of the staff and material support available, and learn how to be more effective.

Schedules for the legislative breakfasts and lunch are:

Saturday, July 15 (7:00 am to 8:00 am):

- District of Columbia, Iowa, Texas, Connecticut, Illinois, Maine, North Dakota, Utah, Florida, Alabama, Nevada, Washington

Monday, July 17 (7:00 am to 8:00 am):

- Maryland, West Virginia, Missouri, Pennsylvania, Indiana, Massachusetts, Minnesota, Colorado, South Carolina, Tennessee, Mississippi, California

Tuesday, July 18 (7:00 am to 8:00 am):

- North Carolina, Oklahoma, Delaware, New Jersey, Wisconsin, New Hampshire, Vermont, South Dakota, New Mexico, Puerto Rico, US Virgin Islands, Kentucky, Hawaii

Tuesday, July 18 (12 noon to 1:30 pm):

- Virginia, Kansas, Nebraska, New York, Michigan, Ohio, Rhode Island, Montana, Idaho, Arizona, Wyoming, Georgia, Louisiana, Arkansas, Alaska, Oregon

The schedule will also be posted in San Diego and will be included in the annual meeting app. Please make plans to attend your appropriate legislative breakfast. It is important that all commissioners participate. If you have any questions, please contact the Chicago office.

Legislative Update

The ULC's legislative year is winding down and most state legislatures have adjourned for the year. To date, there are 192 introductions and 74 enactments. At least 10 additional enactments, and possibly more, are expected before the end of our legislative year.

The Revised Uniform Fiduciary Access to Digital Assets Act (2015) was introduced in 24 states and enacted in 15 states, bringing its total number of enactments to 35. RUFADAA leads all acts for introductions in 2017, and it is likely there will be more enactments before October 1.

The 2014 Amendments to the Uniform Voidable Transactions Act has been introduced in 15 states and enacted in six, bringing its total number of enactments to 15. The Revised Uniform Athlete Agents Act (2015) was introduced in 12 states and enacted in five, bringing its total number of enactments to eight. The Uniform Electronic Legal Material Act was introduced in eight states and enacted in four, bringing its total enactment number to 17.

The Revised Uniform Unclaimed Property Act (RUUPA), just promulgated in 2016, was introduced in seven states and enacted in three. At its May 2017 meeting, the Legislative Council also added RUUPA to the Target Act List (see accompanying article)

Indiana and Utah lead all states with six enactments each. Nevada and West Virginia each had five enactments. North Dakota and Washington each had four enactments. Every state except Louisiana and Wisconsin had some legislative activity in 2017.

Of particular note is the legislative report from Missouri, which this year enacted Revised UCC Articles 1 and 7 (Missouri was the last state to enact these revised articles, which have now been enacted in every state and the District of Columbia). Commissioner Lowell Pearson was instrumental in leading the enactment efforts for UCC1 and 7.



New Target Act: Revised Uniform Unclaimed Property Act

At its May 9, 2017 meeting, the ULC Legislative Council added one new act to the Target List: the Revised Uniform Unclaimed Property Act (RUUPA).

RUUPA, promulgated in 2016, is an update to the Uniform Unclaimed Property Act, which was last amended in 1995. Every state has unclaimed property laws, which apply to all businesses, nonprofit organizations, government entities, and individuals who hold property owned by other persons or have fixed obligations to pay debts due to other persons.

The key parties involved in the distribution and processing of unclaimed property are the apparent owner, holder, and administrator. The apparent owner is the person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder. The holder is the person obligated to hold for the account of, or to deliver or pay to, the owner property that is subject to the RUUPA. If the property is “abandoned” under the Act, then the holder must report the property to the administrator, the state official responsible for administering the RUUPA.

Article 2 of RUUPA establishes rules to determine if property is abandoned. Under the Act, property is presumed abandoned if it is unclaimed by its apparent owner after a specified period of time (the dormancy period). The length of the dormancy period depends on the type of property. RUUPA establishes dormancy periods for some types of property that were not covered in previous versions of the Act, including health savings accounts, custodial accounts for minors, stored-value cards, and more. RUUPA also clarifies that property is not presumed abandoned if the apparent owner shows an interest in the property during the dormancy period designated in the Act.

Article 3 establishes three priority rules to determine which state may take custody of property that is presumed abandoned. The first-priority rule grants custody to the state of the last-known address of the apparent owner, according to the holder’s records. The second-priority rule grants custody to the state of corporate domicile of the holder, if there is no record of the address of the apparent owner, or the address is in a state that does not permit the custodial taking of the property. The third-priority rule permits a state administrator to take custody of the property if (1) the transaction involving the property occurred in the state; (2) the holder is domiciled in a state that does not permit the custodial taking of the property; and (3) the last-known address of the apparent owner or other person entitled to the property is unknown or in a state that does not permit the custodial taking of the property.

Under Articles 4 and 5, the holder of property presumed abandoned must send a notice to the apparent owner about the property and must file a report with the administrator about the property.

Articles 6 and 7 describe how the administrator may take custody of unclaimed property and how it may sell it. Except for securities, the RUUPA allows the administrator to sell the property three years after receipt, but it is not required to do so. Securities may be sold three or more years after the administrator receives the security and gives the apparent owner notice. The administrator is prohibited from selling military medals or decorations awarded for military service. Instead, the administrator may deliver them to military veterans’ organizations or governmental entities.



Article 8 directs the administrator to deposit all funds received under the Act into the general fund of the state. Article 8 also requires the administrator to maintain records of the property.

Article 9 addresses various scenarios in which the administrator of one state would need to pay or deliver unclaimed property to another state, either because there is a superior claim to the property by the other state or the property is subject to the right of another state to take custody.

Article 10 explains how an administrator may request property reports and how an administrator may examine records to determine if a person has complied with the Act. Article 11 gives holders the right to seek review of determinations made by the administrator about their liability to deliver property or payment to the state. Article 12 imposes a penalty on a holder that fails to report, pay, or deliver property within the time required by the Act. Civil penalties may also apply if the holder enters into a contract to evade an obligation under the Act.

Article 13 of the RUUPA governs the enforceability of an agreement between an apparent owner and a “finder” to locate and recover property. The Act requires a signed record between the parties to designate the finder as an agent of the owner. Article 14 explains what information is considered confidential under the Act. The Article describes when confidential information may be disclosed under the Act, and the steps that an administrator must take in the event of a security breach.

The Revised Uniform Unclaimed Property Act makes a number of improvements to earlier versions of the uniform act in order to keep up with technological changes and new forms of property. RUUPA has already been enacted in three states: Delaware, Tennessee, and Utah.

ULC Member News



South Carolina Commissioner **Edward W. Mullins Jr.**, partner emeritus with the law firm Nelson Mullins Riley & Scarborough, LLP, received the Midlands Mediation Center's McKay Brabham Award as an outstanding and determined champion of justice. The award was presented on April 18 at the Center's Building Bridges Celebration. In being selected for the McKay Brabham Award, Ed joins other individuals who have been recognized

as champions of justice by working for reconciliation and peace and by transcending the barriers of social class, belief systems, racial status, and gender. Ed's impact has been at the state and national levels, including currently serving on the board of the National Center for State Courts. Ed devotes considerable time to community causes, especially organizations that address mental health needs. Ed has been a Midlands Mediation Center volunteer mediator in both magistrate and family court cases since 2010.



Louisiana Commissioner **Michael H. Rubin**, a member in McGlinchey Stafford's Baton Rouge office, has been appointed to the American Bar Association's Standing Committee on Ethics and Professional Responsibility. The ABA's Standing Committee on Ethics and Professional Responsibility not only drafts the Model Rules of Professional Conduct that govern lawyers' responsibilities to the law, their clients, and the courts, but also issues opinions interpreting the

rules. Mike, who heads McGlinchey Stafford's national appellate team, has a longstanding involvement in the field of professional responsibility. He has taught courses on the subject at both LSU Law School and Tulane Law School, and his many publications on the subject are used in law schools and CLE seminars around the country. Mike has served as President of the Louisiana State Bar Association, the American College of Real Estate Lawyers, the Bar Association of the U.S. Fifth Circuit Court of Appeals, and the Baton Rouge Bar Association.

Newly Appointed Members

Many new members have been appointed to the ULC in the last several months.

In **Alabama**, John Treadwell, Deputy Director of the Alabama Legislative Services Agency, Legal Division, has been appointed an associate commissioner.

In **Arizona**, Michael T. Liburdi, general counsel for Arizona Governor Douglas A. Ducey, has been appointed commissioner.

In **Arkansas**, there are three new commissioners. David Nixon, an attorney in Springdale who had also previously served for 12 years as commissioner, has been appointed commissioner, replacing Lynn Foster. Cliff McKinney, an attorney in Little Rock, has been appointed commissioner, replacing Carolyn Witherspoon. John Sheperd, an attorney in El Dorado, Arkansas, has been appointed commissioner, replacing Elisa White.

In **Georgia**, Nicole Julal, Regional Director, Government Affairs with CVS Health, has been appointed commissioner.

In **Tennessee**, there are two new commissioners. Timothy L. Amos, Executive Vice President and General Counsel with the Tennessee Bankers Association in Nashville, has been appointed commissioner. State Senator J. Douglas Overbey, representing the 2nd District from Knoxville, has been appointed commissioner.

Condolences



Former Kentucky Commissioner Wm. T. (Bill) Robinson III recently passed away at the age of 72 after a battle with lung cancer. Bill was a member of the ULC from 2012 until 2015. Bill was a very active member in the ABA, serving as the 135th President from 2011-2012. He served more than 30 years in the ABA House of Delegates, and was currently serving as chair of the Standing Committee

of the American Judicial System. Bill was member-in-charge of the Florence, Kentucky, office of Frost Brown Todd LLC, and had a distinguished legal career that spanned more than 40 years. He served as the 50th President of the Kentucky Bar Association, and president of the Kentucky Bar Foundation. Bill is survived by his wife Joan, son Wm. T. "Tay" IV (Jennifer), daughter-in-law Bridget and four grandchildren.



Herma Hill Kay, the first woman to lead Berkeley Law faculty, recently passed away at the age of 82. Although not a commissioner, she served as reporter for the Drafting Committee on the Uniform Marriage and Divorce Act. Herma joined Berkeley's law faculty in 1960, and was named Dean at Berkeley Law School in 1992. She returned to teaching in 2000, and continued

teaching at Berkeley until 2016. Herma is survived by three sons and four grandchildren.

Staff News



Congratulations to ULC Legislative Counsel Kaitlin Wolff (née Dohse), who recently married Josh Wolff at a ceremony just outside Chicago. Kaitlin and Josh met while students at the University of Illinois College of Law. Josh serves as a law clerk to Justice Eileen Burke of the Illinois Appellate Court. Kaitlin has a new name and email! You can reach Kaitlin at kwolff@uniformlaws.org. Congratulations Kaitlin!

