

**STATE OF HAWAI'I
DEPARTMENT OF THE ATTORNEY GENERAL
COMMISSION TO PROMOTE UNIFORM LEGISLATION**

**MINUTES OF MEETING
Held on December 5, 2023**

1. CALL TO ORDER.

Pursuant to written public notice posted on the State of Hawai'i Calendar of Events on November 15, 2023, with an updated notice posted on November 29, 2023, at 5:30 p.m., the meeting of the Commission to Promote Uniform Legislation (CPUL) was called to order by Chair Lani L. Ewart at 10:04 a.m. on Tuesday, December 5, 2023, via Zoom conferencing facilitated by Brandon Salbedo of the Department of the Attorney General, who also acted as the Zoom moderator. In compliance with section 92-3.7, Hawaii Revised Statutes, a physical meeting site was provided at Hale Auhau Third Floor Conference Room, 425 Queen Street, Honolulu, Hawai'i 96813.

Commissioners Present: Lani L. Ewart, Chair
Elizabeth Kent, Vice-Chair
Peter Hamasaki
Blake Oshiro
Michael Tanoue

Also Present: Ken Takayama and Robert S. Toyofuku,
Life Members of the National Conference of
Commissioners on Uniform State Laws, also referred to
as the Uniform Law Commission (ULC),
Jill T. Nagamine, Deputy Attorney General
Maurice S. Kato, Deputy Attorney General
Kotoba Kanazawa, Deputy Attorney General, and
Romina Marquez, Legal Clerk, of the Legislative Division of
the Department of the Attorney General

Jill T. Nagamine, Kotoba Kanazawa, and Romina Marquez participated from the physical meeting site via Zoom. The rest of the participants joined the meeting via Zoom remotely. All commissioners attending were visible via Zoom.

2. APPROVAL OF MINUTES OF MEETING of June 27, 2023.

Chair Ewart asked the commissioners if there were any changes or corrections to the minutes. No one recommended changes.

Motion: Commissioner Kent moved to approve the minutes as written, noting that they were well done, and Commissioner Tanoue seconded the motion. There was no

discussion. The motion was approved unanimously by voice vote, and the motion was carried. The minutes of the meeting of June 27, 2023, were approved as written.

3. OLD BUSINESS.

Follow-up with the 2023 Annual Meeting of the National Conference of Commissioners on Uniform State Laws (NCCUSL) held in Honolulu, Hawai'i (at the Sheraton Waikiki).

The Commissioners and Ms. Nagamine provided comments, as follows:

Commissioner Tanoue noted that this was the second annual meeting that he attended. He observed that it ran smoothly. He felt that Commissioner Kent, Life Member Toyofuku, and others did a great job organizing and making it special in a way that was unique from what can be offered elsewhere in the country.

Commissioner Oshiro felt that it was really well-run. He heard a lot of compliments from attendees. He knows that out-of-state commissioners and their families enjoyed the activities that were put on by the host committee.

Commissioner Hamasaki felt a bit disconnected from the meeting this year and concluded it might have been because he went home every night instead of staying at the hotel.

Commissioner Kent agreed with the comments made by Commissioners Tanoue, Oshiro, and Hamasaki.

Life Member Takayama thought the meeting went well. Some out-of-state commissioners told him they ought to have the meeting in Hawai'i every year. Commissioner Takayama reminded the group that that was the last Annual Meeting he plans to attend.

Life Member Toyofuku heard a lot of positive comments from out-of-state commissioners who were glad to be back in Hawai'i, specifically in Honolulu. The weather was accommodating. He thought the sessions went well and were well attended.

Ms. Nagamine reported that she felt it was exhausting. She attended all but one of the sessions of the committee of the whole (Saturday afternoon) and found it to be intense. She was impressed with the process that so thoroughly reviews every uniform act and allows formal input from anyone who wishes to participate. She noted that many ULC commissioners were very well-prepared with relevant points on the acts being discussed. Life Member Toyofuku noted that the Hawai'i commissioners used to attend every session of the committee of the whole, but it was exhausting to keep track of each act, so years ago they decided to split up the responsibilities of attending the sessions.

Doing so allows them to participate in and focus on individual acts to which they are assigned and to serve on various other committees.

Chair Ewart was impressed with the many activities and things to do that the hard-working ULC staff arranged and coordinated. Commissioner Kent added her thanks to the spouses who played an active role in that coordination: Lynne Toyofuku, Diane Kishimoto, Carolyn Hamasaki, and Uson Ewart.

Chair Ewart added her thanks to all for their hard work at the Annual Meeting and noted that it was much appreciated by all the ULC commissioners.

There was no other old business to discuss.

4. NEW BUSINESS.

Discussion of Uniform Acts for Introduction or Support in the 2024 Regular Legislative Session, as follows:

(a) New Uniform Acts that were approved at the 2023 Annual meeting.

- (1) Consumer Debt Default Judgments Act—Commissioner Tanoue said he would talk to the people in the Collection Law Section of the Hawaii State Bar Association to see if they are interested in this act. He also noted that it is a complicated Act. Chair Ewart suggested that we look at this in the upcoming year to determine if there might be interest for the 2025 legislative session. Life Member Toyofuku suggested talking to attorney Marvin Dang because he does collections work. Commissioner Kent suggested talking to Hawai'i Appleseed, Legal Aid, and other consumer lawyers for their perspective.

Commissioner Kent added that there is a surprisingly significant number of civil cases in the circuit courts in Hawai'i that end in default judgments because the defendants fail to respond or attend hearings, and there may be data available from the Judiciary about that. She has co-written articles about it. (e.g., *Settling Civil Lawsuits in the Hawaii Circuit Courts*, Hawaii Bar Journal, Vol. 10, No. 13, 2007; *Let's Stop Spreading Rumors about Settlement and Litigation: A Comparative Study of Settlement and Litigation in Hawaii Courts*, Ohio State Journal on Dispute Resolution, Vol 29, pp. 85-160, 2014.)

- (2) Special Deposits Act—Chair Ewart was on the drafting committee. She is not sure whether Hawai'i lenders (banks) will be interested in this act just yet. Special deposits are those that banks hold in escrow until an event or circumstance occurs to trigger the money getting released to the beneficiary. It puts banks in the position of being the escrow holder. In

Hawai'i, most people would work with one of the established escrow companies. The commissioners will need to reach out to banking groups to see if they are interested in the protections and responsibilities afforded by this act. Life Member Takayama asked whether this act might be relevant for those people who are raising funds for West Maui, because if it would, then that might be some added leverage to get it passed in 2024. Chair Ewart thinks it might be possible, but setting up a special deposit account would require the consent of the beneficiary and agreement of all parties, and to the extent that the beneficiaries on Maui and the amounts that they get may not be known, it would make it difficult to apply this act to that situation. She said that while money coming in could be held in that kind of escrow account and upon the satisfaction of certain conditions, released to a beneficiary, the beneficiary would need to be identified. Life Member Takayama raised the issue because he wondered if it could be a mechanism to help Maui. Chair Ewart thinks that the applicability of this act to the situations in Maui is limited.

Speaking of uniform acts that might benefit the Maui situation, Commissioner Kent asked if anyone recalled an act from a few years ago called the Fundraising Through Public Appeals Act. She says it was about crowd funding. The proposed act never made it to the status of a Uniform Act, and the drafting committee was discharged in 2019 (at around that same time, the Tort Law Relating to Drones Act also did not make it). According to Chair Ewart there are many reasons for a drafting committee to be discharged, including the issues being too large, there being other laws that accomplish the purpose, and an act under consideration getting split into multiple acts. Having said that, in terms of an act that would apply to fundraising, many of the commissioners opined that the Legislature will likely introduce multiple bills in 2024 that address that issue.

Life Member Takayama noted that a version of a Uniform Act can pop up unexpectedly, both by being introduced and by being inserted into a bill by a committee after its introduction.

Motion: Commissioner Kent moved to authorize Chair Ewart to decide the CPUL's position and, if applicable, authorize work by another commissioner(s) on any legislation that relates to a uniform act and is introduced during the 2024 legislative session. Commissioner Hamasaki seconded the motion. There was no discussion. The motion was carried by a unanimous show of hands of all commissioners.

- (3) Health-Care Decisions Act—Life Member Takayama believes that this bill is not yet ready for introduction in Hawai'i for the 2024 session.

- (4) Public-Health Emergency Authority Act—Commissioners Kent and Oshiro followed this act. Commissioner Kent defers to Commissioner Oshiro, who believes the topic of emergency powers is politically charged right now, and this would not be the right time, politically, to introduce this act.
 - (5) Unlawful Restrictions in Land Records Act—Commissioner Hamasaki noted that it seemed to him as if this act doesn't do anything. Chair Ewart shares that opinion, and she also thinks that this act might create more uncertainties in our Land Court system. Ms. Nagamine noted that when she listened to the meetings about this act, she felt that it lacked specificity and would thus not accomplish anything.
- (b) Other Uniform Acts that have not been enacted in Hawai'i.

- (1) Chair Ewart asked about the status of the Uniform Parentage Act (2017). Commissioner Kent said that she is aware that there is a Task Force to Recommend Amendments to Update Existing Parentage Laws that was established by Act 156, Session Laws of Hawaii 2023. Act 156 had been introduced as a version of the Uniform Parentage Act but was amended to establish a task force. Commissioner Kent thinks that the executive committee of the task force may have approved new wording that included gamete donors. Life Member Toyofuku thinks that the Uniform Parentage Act may not be ready for introduction until 2025. Ms. Nagamine provided an update that she had learned from the draft task force report to the Legislature, that the task force is reviewing another draft provided by Judge Jessie Hall, and the task force thinks it may not be ready for introduction until 2025. It is unknown whether Judge Hall may try to have her draft introduced in 2024.

Motion: Commissioner Hamasaki moved for approval for the Commission to respond to any bill that introduces a version of the Uniform Parentage Act during the 2024 regular legislative session. Commissioner Kent seconded the motion. The motion was carried by a unanimous show of hands of all commissioners.

- (2) Chair Ewart asked if there are any other uniform acts that we ought to be introducing this session.

Commissioner Kent indicated that she did not have any new acts that she wanted to introduce in 2024, but she is prepared to respond to whatever else might be introduced.

Chair Ewart pointed out that if there are acts the commissioners would like to introduce, the timing might prevent anything from getting properly formatted and drafted. A short discussion ensued about the existence and

availability of bill drafting software and bill draft comparison software. Life Member Takayama is not aware of any software that puts bills in Ramseyer format—that must be done manually and is labor intensive. Microsoft Word can provide a comparison draft, but if there are significant changes between drafts, it may be difficult to follow and not very useful. Some comparisons need to be made with side-by-side manual review of drafts, with the possible assistance of a committee report that describes changes to a draft. Life Member Toyofuku says that in the past he has given straight text drafts to legislators, and they do the necessary formatting.

Chair Ewart mentioned that, in light of the timing constraints, we ought to have our meeting earlier in the year—maybe in the fall.

- (3) Life Member Toyofuku plans to meet with the Speaker of the House and will check with the speaker if he is interested in any uniform acts.

Commissioner Kent suggested that it might be useful to contact Senate Judiciary Chair Rhoads to gauge his interest in uniform acts. She also suggested reaching out to House Judiciary & Hawaiian Affairs Chair Tarnas to see if he is interested in the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. Life Member Toyofuku will contact Senator Rhoads' staff, and Commissioner Oshiro will reach out to Chair Tarnas.

- (4) Commissioner Oshiro pointed out that there were acts that the ULC had asked the CPUL to look at for introduction that are mentioned at page 4 of the June 27, 2023, meeting minutes.

The Child Abduction Prevention Act was introduced in 2010 and never passed. Life Member Takayama recalls that a legislative committee was concerned about competing claims made by parents affecting the outcome. Chair Ewart thinks this is not worth pursuing unless it gets proposed by someone else.

The Community Property Disposition at Death Act is an update of an earlier act that was adopted in Hawai'i (chapter 510, part II, Hawaii Revised Statutes). Chair Ewart thinks this may be an act to introduce in a future legislative session.

The Civil Remedies for Unauthorized Disclosure of Intimate Images Act is a possibility but would need to go through the process of determining if it would have support. Commissioner Kent expressed interest but does not anticipate working on it in the 2024 legislative session.

Unregulated Child Custody Transfer Act—this was previously introduced and did not pass. But Life Member Takayama thinks there is a potential for someone other than CPUL to introduce it this year.

- (5) Commissioner Tanoue thinks that 2024 is too early to move the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. Commissioner Kent indicated that House Judiciary & Hawaiian Affairs Chair Tarnas put together an informal working group to look at this issue, but she does not know whether that group is prepared to offer legislation on the issue in 2024. If so, House Bill No. 1440, is a carryover bill that will possibly be the vehicle for it.
- (6) No one is aware of other uniform acts that will be carried over from the 2023 session to the 2024 session.
- (c) Deliberation of which Uniform Acts to attempt to introduce.

As a recap, the Commission will be:

- (1) Following the progress of the Uniform Parentage Act;
- (2) Double checking with legislators about any uniform acts that they might be considering; and
- (3) Following up with some of the 2023 uniform acts for a future legislative session.

5. ADJOURNMENT.

Chair Ewart wished all attendees happy holidays and restated her appreciation for all the work commissioners and life members did to make the annual ULC meeting successful. Commissioner Kent asked if all commissioners plan to be available during the 2024 legislative session. Some commissioners, including Chair Ewart, have travel plans for various times during the session, so all commissioners need to keep Chair Ewart informed of their schedules so that coverage for all bills can be arranged without gaps. On that note, to allow for continuous coverage and continuous decision-making authority in the Chair's absence, the following motion was made:

Motion: Commissioner Tanoue moved to authorize Vice-Chair Kent, or a commissioner that Vice-Chair Kent delegates, to designate a commissioner to work on any legislation that relates to a uniform act and to approve actions by that commissioner when Chair Ewart is out-of-state during the 2024 regular legislative session. Commissioner Hamasaki seconded the motion. The motion was carried by a unanimous show of hands of all commissioners.

There being no other new business or announcement, Chair Ewart adjourned the meeting at 11:39 a.m.

Respectfully submitted,

Romina Marquez

Romina N. Marquez
Legal Clerk
Legislative Division

Approved for Submission:

Jill T. Nagamine

Jill T. Nagamine
Deputy Attorney General

Approved by the CPUL:

As Submitted

With Corrections

Date Approved: 6/25/24 JJK