

Uniform Law Commission

Drafting Committee on Authentication and Preservation of State Electronic Legal Materials

Minutes of Conference Call:
October 29, 2009

Members Present: Michele Timmons, *Chair*, Jerry Bassett, David Biklen, Diane Boyer-Vine, Stephen Chow, Vincent DeLiberato, Stephen Willborn, Jack Davies, and Barbara Bintliff, *Reporter*. Observers and others present: John Sebert (ULC Executive Director), Katie Robinson (ULC Communications Officer), Deborah Behr (ULC Style Committee Liaison), Anders Ganten (LexisNexis), Robert Horton (Minnesota Historical Society), Ralph Preston (ARJD), Michael Wash (USGPO), Judith Wright (University of Chicago)

Michele Timmons, Chair, presiding

The meeting opened with Michele Timmons introducing herself, welcoming all to the project, and asking each participant to identify himself/herself as the roll was called.

Review of Study Committee Report

Michele reviewed briefly the work of the study committee and its report (previously distributed to members and observers of the Drafting Committee), beginning with her involvement in authentication issues in 2007. She described her participation in the AALL Authentication Summit in spring 2007, and subsequent work to propose the drafting of a uniform or model law. The Executive Committee of the ULC approved formation of a study committee in 2008; Michele was appointed chair.

The Study Committee held four conference calls. Its report, which included a recommendation that a uniform law be drafted and the outline of a proposed uniform law, was accepted by the ULC Executive Committee. Formation of a drafting committee to prepare a uniform law describing minimum standards for the authentication and preservation of electronic state legal materials was approved; Michele was asked to chair the drafting committee.

Brainstorming Additional Observers

Members discussed whether additional observers should be added to the project. John Sebert reported that he has contacted several organizations with the objective of adding one or more observers representing the courts.

There was general agreement that the Committee would need to consult someone who can provide “greater technological depth” to the deliberations without being a representative of a particular technology or company. It was noted that authentication and preservation may not be

based on the same technologies, and the Committee may need more than one person to provide adequate technological knowledge.

There was general agreement that the Committee needed to develop a technologically neutral draft, probably with several alternative provisions for discussion to ensure that the draft is flexible enough to cover evolving technologies. It was suggested that the Uniform Real Property Electronic Recording Act included technologically neutral provisions that might be useful to the Committee's work. Other groups, including the Library of Congress and NALIT (National Association of Legislative Information Technology) may be working on standards similar to the Committee. It was decided that Michele would look for someone to act as an observer to provide greater technological depth.

Title of Act

In addition to the list of possible titles distributed in advance of the meetings, two more were added: Uniform Access to State Electronic Law (UASEL) and Uniform Access to State Electronic Documents (UASED). John Sebert noted that name changes must be submitted to the Executive Committee for approval.

A number of questions and considerations regarding the title were raised, including the following which will need to be considered during the drafting process:

1. What is the scope of the documents covered by the project? Are constitutions and executive orders included, for instance?
 2. Most states have records retention laws. How will these be implicated? Do these laws suggest that the Committee should focus on a narrow scope?
 3. Can the Committee affect the authentication and preservation of judicial decisions, or does that take a court rule?
 4. Is the term "legal materials" too broad?
 5. Some state materials should be kept on a short-term basis only; the definition of what is covered by the act will need to be clear.
 6. Is defining inclusion of materials with the "force and effect of law" narrow enough?
 7. Is "access" the concern to be addressed, or is it authentication and preservation?
- Members agreed that most states already have laws covering access, and that authentication is the issue to be addressed by the Committee.

Michele summarized the discussion to this point, as follows:

There was consensus on the use of the term "electronic" instead of "online." There is strong consensus that both "authentication" and "preservation" are important terms for the title, but divergence on whether "law" or "legal materials" should be used; the group tended towards "legal materials," and it was agreed to use this term initially and decide later whether to change it.

Discussion followed on including the word "state" in the title. Concern was raised that "state" was too inclusive, and that it might, for instance, require application of the law to materials

digitized by a state law school library. Should “state” be included as a bracketed alternative, since there is no intent to exclude local governmental legal materials from coverage, if an adopting jurisdiction should so choose? The members agreed that alternative language permitting an adopting jurisdiction to include local governments in the act should be drafted. The members concluded that the use of the word “state” should be talked through as a policy matter at the face-to-face meeting.

The title Uniform State Authentication and Preservation of Electronic Legal Materials Act (USA-PELMA) was proposed. Members debated whether the word “State” should appear instead in front of the word “Electronic,” and concluded that its position at the beginning of the title provides more flexibility. Consensus was reaching on using the USA-PELMA title, at least initially.

Next Steps

1. Michele reminded the group that the face-to-face meeting will be March 5-7 in Chicago. Mike Wash from GPO will demonstrate the Federal Digital System content management system that authenticates US statutes based on digital signatures (using PKI—public key infrastructure).
2. Michele will have the ULC office prepare and distribute the Study Committee’s proposed law, with numbered lined and pages. Comments on the Study Committee proposal should be sent to Michele and Barbara by November 12. Barbara will then develop a first draft and, after consultation with Michele and John, Barbara will circulate the first draft to the Committee in early January 2010 for comments and suggestions.
3. After receipt and comments on the first draft, Michele and the Committee will decide whether e-mail communication is adequate to make progress on a draft, or if another conference call is needed before the March meeting.

The conference call was adjourned.