

REPORT ON CONFERENCE CALL MEETING OF
THE DRAFTING COMMITTEE TO REVISE
UNIFORM LAW ON NOTARIAL ACTS

April 1, 2009

The Drafting Committee to Revise the Uniform Law on Notarial Acts met by conference call on April 1, 2009. Participating in the call were the Chair, Patricia B. Fry, Commissioners David Biklen, Peter Hamasaki, Edward Lowry, Jr., Anita Ramasastry and James Wynn, Jr., Division Chair, Reporter Arthur Gaudio, ABA Advisers James Wine and David Ewan, Kieran Marion, on behalf of the Executive Director, and observers William Anderson, Marc Aronson, Carmelo Bramante, Anita Brenneman, Kathleen Butler, Paul Clifford, Tisha Dubois, Bettie Johnson, Mark Ladd, John Levy, Stephen Morrison, Helen Purcell, Brenda Rieke, Kelly Romeo, Thomas Smedinghoff, Jr., Ozie Stallworth, and Tom Wrosch.

Prior to the conference call, drafts of Section 15(d), dealing with bonding requirements, and Section 4(d), dealing with the power of the notary to refuse to perform notarial acts, had been circulated. In addition, several electronic communications concerning existing state laws and requirements relating to notarial bonds had been distributed.

The discussion commenced with a discussion of Section 15(d), as preliminarily drafted for discussion at the Annual Meeting of the Uniform Law Commission. The data provided concerning state bonding requirements for notarial commissions was discussed. There was a general discussion of the policy of requiring bonds, including the fact that the bond is for the protection of persons relying on notarized instruments and resistance from employers of notaries who argue that the true protection is afforded by the employers' [many of whom are attorneys or banks] liability for acts of their employees and concern that the cost [estimated at \$10/year for a \$25,000 bond in one report] is excessive. It was noted that, at least in some states, notaries may act outside the scope of employment. After discussion, it was the consensus of the Committee that Section 15(d) should be retained and should not be bracketed.

The discussion then turned briefly to the question of whether or not notaries should enjoy immunity as state officials. The reporter pointed out that, in a provision of the draft being prepared for the Annual Meeting, it is specifically stated that no immunity is enjoyed.

The discussion then proceeded to Section 4(d), the power of the notary to refuse to perform notarial acts. Immediate concern, particularly on the part of several

representatives of notary public administrators, was expressed that this provision required, or at least suggested, that the notary bore responsibilities relating to the content and substance of the record being notarized. Mr. Stallworth noted that the North Carolina statute barred notarizing instruments with uncompleted blank spaces. Ms. Rieke noted, on the other hand, that particularly in international adoptions it sometimes is necessary to leave blanks for completion after the documents were forwarded by adoption agencies to the concerned foreign nation. There was lively discussion of the obligations of notaries and whether they have, or should have, any obligation concerning the content and substance of the record or transaction.

After extended discussion, the Committee agreed that the substance of Section 4(d) should be retained, authorizing the notary to refuse to notarize a record when concerned about the identity, awareness or willingness of the signer, utilizing a loose standard which will not impose significant burdens if called upon to justify the rejection and specifying that the notary may refuse to notarize if concerned that there is illegality or fraud involved but has no duty to inquire as to the bona fides.

The participants were advised that the draft would be submitted to the ULC Style Committee. Upon receipt of their advice, the draft will be finalized, including comments, and then circulated to all. It will be on the agenda for a first reading at the ULC Annual Meeting in July.