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### Uniform Law Commission: Group Adds 6 Acts for Montana to Consider

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# Group adds 6 acts for Montana to consider

By **Professor E. Edwin Eck**  
University of Montana School of Law

The non-partisan Uniform Law Commission approved 10 acts at the Conference's annual meeting this summer in Chicago. Montana's Uniform Law Commissioners, Supreme Court Justice Mike Wheat, State Tax Appeal Board Chair Karen Powell, and I, along with Montana Life Member Joe Mazurek, participated in the seven-day meeting.

The newly approved acts include: a new Uniform Military and Overseas Voters Act, amendments to Uniform Commercial Code Article 9, amendments to the Uniform Collateral Consequences of Conviction Act, and an entirely revised Model State Administrative Procedure Act.

With the addition of these acts, the Uniform Law Commission currently recommends approximately 120 acts for enactment by legislatures across the country. The Montana Legislature has enacted about 70 of these Uniform Law acts including the Commercial Code, the Probate Code, the Anatomical Gift Act, the Fraudulent Transfer Act, the Premarital Agreement Act, and the Transfers to Minors Act.

## Montana commissioners

Uniform Law commissioners must be lawyers. The commissioners are lawyer-legislators, attorneys in private practice, state and federal judges, law professors, and legislative staff attorneys. Each state appoints commissioners in accordance with local law. In many states, governors appoint commissioners. Commissioners serve without compensation.

In Montana, the Legislative Council appoints commissioners. Commissioner Wheat was appointed in 2009, Commissioner Powell was appointed in 2008, I was appointed in 1989, and Commissioner Mazurek was appointed in 1984. Commissioner Powell serves as Legislative Liaison for the Montana delegation.

## Memorials to Montanans

This summer's annual meeting included memorials to two well-known Montanans. Commissioner Wheat delivered a memorial for former UM School of Law Dean Robert E. Sullivan who was first appointed to the Commission in 1957. Commissioner Sullivan was an active member of many Uniform Law Conference committees during his 52 years of service on the Commission. Also, Havre native and 1938 graduate of the UM School of Law Frank Jestrab was recognized for his 54 years of active service on the Commission. Dean Sullivan died July 25, 2009 and Frank Jestrab died May 16, 2010.

## Procedures for proposing new uniform acts

The first step in creating a new act occurs when Conference

leaders appoint a study committee to determine whether a uniform act on a particular topic is desirable and practicable. If such a determination is made, a drafting committee is formed.

Drafting committees usually meet three to six times over a one or two-year period to discuss and revise legislative drafts. In addition to the committee members, stakeholders in the subject matter of a proposed act – including ABA, ALI, and consumer representatives – are encouraged to attend committee meetings and participate. Once the drafting committee completes a draft, committee members read it word-by-word before commissioners from all over the country at an annual meeting. Commissioners debate the draft section-by-section.

Commissioners' suggestions cover everything from grammar to public policy. Commissioners contribute their expertise and represent their states.

After the draft is read the first time at an annual meeting, the drafting committee meets another two or three times over the following year to discuss their colleagues' suggestions. Drafting committee members incorporate suggestions into a revised draft, complete comments to the draft, and prepare explanations why some suggestions were not followed. At the next annual meeting of the entire conference, drafting committee members again read the revised draft word-by-word and all of the commissioners again debate the draft section-by-section.

After further modifications, the commissioners usually recommend that the act be presented to the state legislatures for consideration.

Even though four or five years are usually required to complete a single act, these thorough procedures ensure well drafted legislation that brings clarity and stability to critical areas of the law.

## Montana's 2011 Legislative Session

Citizens and various private organizations urge legislators to adopt various uniform acts. Additionally Montana's commissioners identify specified acts which they think are important for consideration. The following acts are among those suggested by the commissioners for consideration during the 2011 session:

- Uniform Military & Overseas Voters Act
- Revised Uniform Limited Partnership Act
- Revised Uniform Limited Liability Company Act
- Revised Uniform Principal & Income Act
- Uniform Collateral Consequences of Conviction Act
- Uniform Unsworn Foreign Declarations Act

■ **The Uniform Military & Overseas Voters Act** provides military personnel and overseas civilians uniform voting processes in both federal and non-federal elections. Although

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when judges must step aside.

Campaign finance laws face growing litigation challenges. North Carolina's judicial public financing law was upheld by the federal courts. But a more recent Supreme Court case, *Citizens United v. Federal Election Commission*, overturned longstanding bans on election spending from corporate and union treasuries—posing a special threat in judicial elections.

A 2002 Supreme Court decision, *Republican Party of Minnesota v. White*, loosened restrictions on judicial campaign speech. Interest groups are using questionnaires to pressure judges into

signaling courtroom decisions on the campaign trail. Professional norms are becoming more important in helping judicial candidates steer clear of special-interest pressures and political agendas.

### The public takes note

The new politics of judicial elections has made the public fear that justice is for sale. More than seven in ten Americans believe that campaign contributions affect the outcome of courtroom decisions. Nearly half of state judges agree.

After years of slow progress, reform gained steam in 2009. Wisconsin enact-

ed public financing for court races, joining North Carolina and New Mexico, and in March 2010, West Virginia's legislature also enacted a pilot public financing program. In Michigan, the Supreme Court adopted tough new recusal rules. Polls show continued strong public support for reform measures—such as public financing of judicial races, election voter guides, recusal reform and full financial disclosure for election ads.

In a pair of 2008 county-level ballot measures, voters in Kansas and Missouri opted for appointment systems over competitive elections for judges. ○

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recent federal law has improved participation by overseas voting in federal elections, the return of ballots by military and overseas voters remain less than the return by other absentee voters and the rate of overseas ballot rejection remains higher than the rejection rate of other absentee ballots. This new act addresses the causes of these problems.

■ **The Uniform Limited Partnership Act** provides a flexible and stable

basis for the organization of limited partnerships which helps states stimulate new partnership business ventures. Although Montana has adopted the 1976 act, Montana has not adopted the 2001 revisions which recognize modern-day uses of limited partnerships by providing greater flexibility and protection.

■ **The Uniform Limited Liability Company Act** permits the formation of limited liability companies which prove the owners with the advantages of both corporate-type limited liability and partnership tax treatment. Although

Montana adopted the 1996 uniform act, Montana has not yet adapted the 2006 revision. The 2006 revision provides 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 revised Uniform Principal & Income Act** provides procedures for trustees administering trusts in allocating assets between principal and income.

The act governs the proper distribution of assets to beneficiaries.

Although Montana has adopted the act, it has not considered amendments made in 2008 which update the act to reflect the current policy of the Internal Revenue Service and to clarify technical language regarding withholdings.

■ **The Uniform Collateral Consequences of Conviction Act**

addresses the various penalties and disqualifications that individuals face incidental to criminal sentencing, which are often known as “collateral consequences.” The act improves the understanding of such penalties. The act's provisions are largely procedural. The provisions address the holding of the U.S. Supreme Court in *Padilla v. Kentucky*,



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130 S. Ct. 1473 (2010).

■ **The Uniform Unsworn Foreign Declarations Act** would permit, in state court proceedings, unsworn declarations under the penalty of perjury to be executed by witnesses physically located outside the boundaries of the United States for specified purposes.

In addition to these acts, Montana commissioners help legislators and citizens who wish to learn more about other uniform and model acts.

If you are interested in any uniform or model acts proposed by the Uniform Law Commission, contact any of Montana's commissioners. Karen Powell can be contacted at [kpowell@mt.gov](mailto:kpowell@mt.gov) or (406) 444-5394.

Justice Wheat can be contacted at (406) 444-5494. I can be contacted at [e.eck@umontana.edu](mailto:e.eck@umontana.edu) or (406) 243-6534.

Also, you can locate copies of Uniform Acts, including act summaries and section-by-section comments, on the Commission's website at [www.nccusl.org](http://www.nccusl.org). ○

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## NEWS ABOUT MEMBERS

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The Holland & Hart law firm announced the addition of **Adrian Miller** to its Billings office. Ms. Miller, a native of Fort Benton, is an associate in the firm's Commercial Litigation Department. Prior to joining Holland & Hart, Ms. Miller completed two legal internships. She holds a JD from Hofstra Law School and a BA in Sociology from Montana State University.

U.S. Attorney Michael W. Cotter announced the hiring of four new attorneys for positions in Indian Country in the District of Montana:

■ **Jessica Betley** received her law degree in 2007 from Ohio State University and practiced law in the Bozeman City Attorney's Office following graduation. Ms. Betley will be prosecuting felony crimes in Indian Country out of the Great Falls U.S. Attorney's Office.

■ **Danna Jackson** received her law degree from the University of Montana. Ms. Jackson spent 10 years in Washington, D.C., working for Senator Tim Johnson (D-SD) advising him on Indian Appropriations and Judiciary Committee matters. During her time in Washington, D.C., she also served as staff attorney for the National Indian Gaming Commission and worked with Akin Gump Strauss Hauer & Feld in Indian law and policy issues. Ms. Jackson will fulfill the duties of tribal liaison out of the Helena U.S. Attorney's Office.

■ **Laura Weiss** received her law degree in 2009 from the University of Pennsylvania Law School and recently completed a clerkship for Justice William Leaphart of the Montana Supreme Court. Ms. Weiss holds a public policy and business certificate from the Wharton School of Business. Ms. Weiss will prosecute felony crimes in Indian Country out of the Great Falls U.S. Attorney's Office.

■ **Michael Wolfe** received his law degree in 2009 from the University of Montana and recently completed a clerkship for Justice Brian Morris of the Montana Supreme Court. In addition to his legal career, Mr. Wolfe is also an avid competitor in ultra-marathons. He recently placed second out of 2,500 competitors in a 62-mile race, the Ultra Trail du Mont Blanc in southeastern France. Mr. Wolfe will prosecute felony crimes in Indian Country out of the Helena U.S. Attorney's Office.

**David Moon**, editor of *The Water Report*, was a speaker at the Idaho Water Law Conference in Boise, Idaho, in late

September. Mr. Moon spoke on a panel that addressed "Water Litigation Update: Recent Cases." His presentation dealt with litigation regarding "exempt wells" in Washington, New Mexico, and Montana. He has practiced water law his entire career and helped co-found *The Water Report*, a professional newsletter that covers water rights and water quality issues, in 2004.

Lewistown, Mont., native and State Bar of Montana member **Susan Machler** was sworn in as governor of the 9th Congressional District for the Washington State Bar Association on Sept. 23. She is a partner in the Seattle law firm of Osborn Machler. Born and raised in Lewistown (she graduated from Fergus High School in Lewistown), Ms. Machler has resided in the Seattle area for 23 years. She received her bachelor's degree from the University of Idaho. She received her law degree magna cum laude from the University of Puget Sound School of Law (now Seattle University). She has devoted her legal career to personal injury

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