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Staff was directed to distribute the Report. In the past, copies were not sent out to all the Legislators because of the prohibitive cost. At this time, since the cost of sending it on a CD is reasonable, copies will be sent to all of the Legislators.

#### Miscellaneous

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Albert Burstein and Vito Gagliardi, Jr. Grace Bertone of McElroy, Deutsch & Mulvaney attended on behalf of Commissioner Rayman Solomon, Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch and Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Also present was Paul S. Natanson.

#### Minutes

The Minutes of the February 19, 2004 meeting of the Commission are to be modified by Staff to insert the word "bankruptcy" in the third paragraph of the "Old Projects – Status Report" section, the second-to-last sentence, between "federal" and "statutes" and were accepted as amended.

### Enforcement of Judgments

The Commission decided to meld subsections (a)(3) and (4) of section C-6 with a dollar limit of \$2,000 for all forms of property. The cost-of-living escalator will be retained. The first word in C-6(a)(3), "goods" will be changed to "property."

Professor Garland suggested that the limitation on the fee that may be charged by a bank seemed to be in the wrong place when included in C-6 (a)(4). John Cannel explained that the banks were not happy with the \$25 limit. Including a provision addressing permissible fees is necessary because if there were no such language, some would take the position that the bank was not entitled to any fee while others would suggest that the bank was entitled to set its own fee in the absence of statutory guidance. The Commission agreed that the \$25 limit would be retained, and that the language would have its own subsection with a comment referencing the fee limit subsection.

Professor Garland noted that the federal bankruptcy law gives protection to both alimony and child support, making both non-dischargeable. While the New Jersey case cited in the comment to section C-6, *Redick v. O'Brien*, addresses only the issue of child support, Commissioner Gagliardi checked the case and determined that if the Commission protects child support but not alimony, it undercuts the basis for the decision. Chairman Burstein requested that Staff revise the language, including alimony without any qualifying language and explaining the reason for the inclusion in the Comment to the section. In C-6(b), in the fourth line, the year "1997" will be changed to "2004."

assessments made for improvements to real property. The Commission determined that the word "assessments" would be stricken.

With regard to C-6(c)(1), Professor Garland asked if property that has been modified would still be regarded as "the same property." Mr. Cannel said that determination would have to be made by the courts.

Professor Bell asked, with regard to C-6(a), if it was implicit that the language referred to a decedent being a resident of New Jersey at the time of the decedent's death. The Commissioners decided to modify the language to clarify the point, and to change "resident" to "domiciled" at Commissioner Gagliardi's request to avoid confusion; case law has held that one may have multiple residences but only one domicile. The phrase "at the time of death" will be inserted in the last line following "State of New Jersey."

Regarding a proposed requirement that execution exhaust personal property before real property, Mr. Cannel said that the Commission previously had decided that there was no reason why a creditor could not collect against any property a debtor owned. In response, Legal Services raised the issue of elderly persons who would lose their homes as a result of suits by medical providers. An attempt was made to offer protection for debtors by drafting language allowing an execution against real property after obtaining a court order saying that the debtor's personal property was insufficient. Alternatively, Professor Garland suggested a mechanism allowing a creditor to pursue real property of a debtor in the absence of an objection by that debtor.

Chairman Burstein voiced a concern about the frequency with which parties appear in court claiming problems with identification and saying that they were never served. He also noted that not much direction was given to the court in the current language. Mr. Cannel acknowledged the difficulty in setting standards in this area. Professor Garland suggested drafting a more specific standard and Professor Bell said that Mr. Cannel's approach seemed like a sensible and efficient one.

Professor Garland suggested that if a debtor who has already been adjudicated responsible for a debt wishes to avoid execution against personal property, the burden should be on the debtor to demonstrate that there is, in fact, personal property to execute upon. He further suggested adding some language to indicate that an examination of the debtor be viewed as presumptive evidence that there is insufficient personal property. Mr. Cannel said that Staff could draft language requiring a creditor to pursue some procedure in aid of litigant's rights and if the debtor did not appear or did not come up with alternative property, then the creditor would be able to pursue real property.

In Section C-31/2(b), the fourth word, "enter" will replace the word "order."

The Commission directed Staff to put the project in Draft form again for review at the April Commission meeting.

## U.C.C. Article 1

Professor Garland suggested that in the definition of good faith the word "credits" be replaced with "letters of credit."

Staff was directed to send out the project with that modification as a Tentative Report.

### Criminal History Record Checks

Mr. Cannel alerted the Commission to the new comments by Mr. Natanson, which were addressed in detail.

Commissioner Gagliardi noted that when 6-7.1 refers to employees, no distinction is made between highly paid employees and those who are paid less, thus the language inserted by Mr. Natanson regarding "extending compassion" to those who are lower paid is not required because clearly everyone is included.

The Commission determined that Mr. Natanson's insertions of the words "paid" and "unpaid" would be incorporated because while redundant, they leave no doubt as to the intention of the statute. Mr. Natanson's suggestion of "and/or" would be removed from the final draft since it is not proper statutory language and "board of education" will not be capitalized since the reference is to all boards, not a specific one, but the comma that Mr. Natanson suggested in section 6-7.1 will be included.

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Laura C. Tharney said that a complete draft of Volume 1 of Title 39, with covering comments highlighting the modifications and deletions, will be forwarded to the Department of Motor Vehicles in the hope that preliminary comments will be received before the May meeting. Ms. Tharney will try to prepare a Table of Dispositions for the May meeting. At the request of Chairman Burstein, Volume 1 will be sent to Steve Robertson, Esq., in Governor McGreevey's office and a personal note will be sent to Sharon Harrington regarding the status of the project, with a copy to Diane Legriede.

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