

**MINUTES OF COMMISSION MEETING**  
**June 16, 2005**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey, were Commissioners Albert Burstein, Vito Gagliardi Jr., James Woller, and Sylvia Pressler. Professor William Garland of Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs.

Also present at the meeting were Betty Greitzer, Esq., New Jersey Food Council; Michael Santos, Ernest Salerno, David L. Edsall, John McGuire, David Dombey and Ray Szpond from the New Jersey Weights and Measures Association; Arthur Raimon, Esq. and Gerard J. Felt, Esq., New Jersey Creditors Bar; Jill Squiers, New Jersey Hospital Association; and Henry Gottlieb, New Jersey Law Journal.

**Minutes**

The Minutes of the meeting of May 19, 2005 were accepted as submitted.

**Enforcement of Judgments**

John Cannel advised the Commission that he was told that the term "collection order" still appears in the document, and that it will be removed. Regarding the reference to "health aids," Mr. Cannel indicated that the language included in the draft is exactly the language of the federal bankruptcy statute. As concerns the term "waste," Mr. Cannel explained that the cases using that term are few and diverse and the meaning of the term is very much affected by the facts of the cases. Chairman Burstein suggested that in the context of the draft, it is intended that the use of the term "waste" pertains to the diminution of an asset. Mr. Cannel suggested that if the Commission used the term, the courts will define it in context, but said that he was asked to determine if there was a clear definition of waste and there really is not. The Commission determined that the language contained in the current draft is preferable to the use of the term "waste."

Arthur Raimon suggested that with regard to Section J-12, the ex parte entry of judgments, many attorneys have language in their Stipulations of Settlement stating that if the defendant breaches the written agreement between the parties, the plaintiff who is to be paid may enter the judgment without notice. If Stipulations of Settlement are included in J-12, then notice will be required to be provided to the defendant contrary to the agreement between the parties. Gerald Felt suggested that Section J-12 is internally inconsistent because it requires following the court rules, which would not ordinarily be applicable to consent judgments. He raised the question of whether J-12 refers to pre-suit or post-suit matters. Mr. Cannel said that the intention was to cover both pre-suit and post-suit matters.

Mr. Felt inquired about consent judgments and said that J-12 appears to require proceeding in the form of a motion even when the plaintiff has a signed consent judgment. Commissioner Pressler suggested that there was a difference between an agreement to

enter judgment (entered into before a breach and, in many cases, before a lawsuit) and a consent judgment/order (entered after a breach and, in some cases, after a lawsuit has already been commenced). She noted that J-12 only deals with the agreement to enter a judgment, adding that if you enter a consent order, it is clear that you are agreeing to the entry of a judgment, rather than to the possibility of the entry of a judgment.

Mr. Raimon suggested that if the Commission adopts the proposed language, there will be more consent judgments, and fewer stipulations of settlement, and noted that consent judgments end up on credit reports, while stipulations of settlement do not. The Commission determined that the language contained in the draft of J-12 would remain unchanged.

Mr. Felt suggested that the definition of "property of the judgment debtor" contained in Section C-1 should not include "earnings" since as it currently reads it seems to conflict with C-25(a)(4) (Return of the writ of execution) and to suggest that wage executions cannot go beyond 24 months. The Commission agreed to modify the provision.

Mr. Felt also noted that he did not see any language clarifying that personal property does not have to be satisfied before pursuing real property. He expressed a concern that if it is not made clear, the courts will rely upon years of the existing case law. Commissioner Gagliardi asked that a line be included clarifying that subject to the other provisions, there is no requirement to exhaust personal property before pursuing real property. The language will be included.

The third sentence of Section C-11(b), which pertains to a levy against personal property in possession of the judgment debtor, states that the debtor shall not allow damage to the property beyond reasonable wear and tear. Commissioner Pressler questioned the use of "shall not allow," and proposed instead "shall not be responsible." Professor Garland suggested using both phrases.

Mr. Felt also asked if it was necessary to put a 30 day limit in Section C-14(e). He explained that sometimes the motion is not made within 30 days, in cases of bankruptcy, for example. He also noted that sometimes banks don't tell the court officer how much is in the account for 30 days. It was determined that the inclusion of some limit was appropriate, but that the limit would be 60 days.

Professor Garland observed that in Section N-4 notice is required, but that in N-1 it does not include the language "any person acquiring an interest in the property".

Chairman Burstein requested that Staff make the corrections discussed at the meeting, and then release the project as a Final Report.

### **Weights and Measures**

Chairman Burstein noted receipt of a Resolution adopted on March 22, 2005, by The Board of Chosen Freeholders, County of Passaic, formally stating its opposition to the proposed revisions in the Law Revision report.

Mr. Cannel explained to the Commission that he had preliminary discussions with the various weights and measures officials regarding liquefied petroleum gas, lumber, and the requirements of a prima facie case for municipalities and other entities. It is his understanding that everyone is satisfied with the results of those discussions, and that if there is a problem, the matter will once again come before the Commission. If there is, in fact, general agreement on the suitability of the proposed provisions, then the matter will go out as a report.

Ernest Salerno advised that he did not feel it was appropriate to centralize authority in the State. Chairman Burstein stated that too much disparity exists throughout the State because each county commissioner fixes standards; that is why the Commission wants Statewide standards to be set. Mr. Salerno said that each county superintendent knows his or her county best. Chairman Burstein said that the Commission understands this position.

The Commission determined that the project should go out as a final report after the changes described by Mr. Cannel are made.

### **Health Services Corporations (proposed new project)**

Mr. Cannel explained that this proposed new project was sent to the Commission by a judge of the Appellate Division who decided Rahway Hospital v. Horizon Blue Cross Blue Shield of New Jersey, 374 N.J. Super. 101, certif. den., \_\_N.J.\_\_ (2005). The Judge thought that perhaps some legislative guidance was needed since the current statute was written a long time ago and does not appear to provide sufficient guidance for the modern context. Mr. Cannel explained that the Appellate Division had some difficulty reaching a decision, but seemed to come to a reasonable one. The issue, involving very technical material, is whether the statute, in conjunction with related state statutory and administrative law and federal law, limits the freedom of contractual parties to establish rate terms subsequent to termination of an agreement between an HMO and a hospital while adhering to continuity of care provisions of the HSCA.

Jill Squiers, of the New Jersey Hospital Association explained that this is a highly technical issue, but that it can have a simple solution. She said that there is only one statute pertaining to this area of the law, the New Jersey HMO Act. Ms. Squiers suggested that the nature of an HMO lends itself to a transition period allowing a patient to select another service provider. Patients with point of service plans, however, can make a choice anytime they seek care whether to seek out a network service or incur non-network co-

insurance and deductibles. She noted that the legislature had had an opportunity to address this issue in 1998, adding that the HMO regulations had been in existence since about 1992. Ms. Squiers suggested that the protections in place for HMO patients in the HMO statute are appropriate, but that changing the other statutes to reflect those terms would be unnecessarily costly.

Ms. Squiers said that the result in reached by the Appellate Division in the case in question was clear and appropriate. Whether the Commission takes on the statute is another question. Contract terminations were not addressed by the Legislature and it is not clear whether the Legislature simply chose not to deal with the issue.

Chairman Burstein asked about the scope of the New Jersey Hospital Association's representation of hospitals, inquiring about whether its members include public and private hospitals. Ms. Squiers said that there were only a couple of hospitals, including Deborah Hospital and Robert Wood Johnson, which do not participate in the organization, but that most hospitals in the State are members.

Chairman Burstein suggested that the Commission take a look at the issue raised to see if there was some action that should be taken by the Commission, noting that the fact that it was flagged by the Appellate Division comes with some obligation that the Commission review and respond. Ms. Squiers offered that she was happy to provide any help that she could while the Commission was reviewing this issue.

### **Title 39**

Laura C. Tharney reported that two areas in which significant organizational changes to the statute have been made are licensing and registration. Currently, the licensing and registration provisions are mixed together throughout approximately 120 sections of the statute. The draft arranges them in orderly fashion.

In addition, there are some gaps in the current statute which, for example, does not plainly state when a driver's license is required. The draft sets forth the requirements specifically. Some police officers have said that the Commission may need to make more changes, in explaining a provisional license, for example, and in clarifying the further steps to take to get a regular license.

Additional clarification is also needed in describing the available permits and the requirements of each, as well as the duration of the permits. Commissioner Pressler said that it would be helpful if the definitions section would distinguish the various permits in terms of age and requirements. "Provisional license" will also be defined.

Regarding registration, Ms. Tharney reported her understanding that the MVC does not want to change the different classes of registration.

In response to a question regarding the lack of a definition of motor vehicle, Ms. Tharney advised that there will be a global definitions section in the beginning of the revised draft, and that "motor vehicle" is one of those terms that will not be defined in each new chapter. Commissioner Pressler suggested that the definition of "supervising driver" should be clarified and that the entity that certifies driving schools should be included clearly in the statute.

Ms. Tharney said that she would clarify whether provisional driver's licenses are still sent by mail. She will also check on whether in New Jersey, a person could receive points on a "basic driver's license" that would not show up on a commercial driver's license and whether vision tests, in fact, are administered.

Chairman Burstein asked how far the preliminary review had progressed in Title 39 and, when told that Staff was into the third of the three volumes, Chairman Burstein asked for an evaluation of where the Commission should start its detailed review and an assessment of which sections should be priorities. He suggested that Staff not provide the Commission with the sections involving few changes, but rather focus on items needing substantial revision and items likely to generate considerable interest.

#### Next Meeting

The next meeting is scheduled for July 21, 2005.