

MINUTES OF COMMISSION MEETING
September 9, 2004

Present at the meeting of the New Jersey Law Revision Commission held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Albert Burstein and Vito Gagliardi, Jr. 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.

Minutes

The minutes of the July 15, 2004 meeting of the Commission were accepted as submitted.

Enforcement of Judgments

Chairman Burstein noted that the memorandum provided by Professor Garland sets out the legal underpinning of the issues and provides approaches taken by other states. Professor Garland explained that the rule requiring exhaustion of personal property before moving against real property is obsolete. He suggested that if a debtor does not want real property sold, the debtor should come forward with personal property. Professor Garland said that requiring a debtor to do this would encourage efficiency and discourage the hiding of personal property by debtors. He stated that it does not make sense to continue a rule that originated in an accident of history: the basis of the current statutory scheme was the common law prohibition of execution against real property.

Commissioner Gagliardi agreed with Professor Garland that the onus should be on a judgment debtor to make good on a debt which that debtor had already been ordered by a court to pay. John Cannel reminded the Commission that the reason for the differing treatment of real and personal property in the draft piece was not legal but political, and that the original draft, which treated real property as something which could be executed against, had met with considerable resistance from Legal Services and the State Bar Association.

Chairman Burstein said that the Commission should go in the direction of the Pennsylvania law. The Commission tentatively decided to return to the position that a creditor should be able to execute a judgment against real property without first exhausting personal property.

Professor Garland noted that the draft provides for adjustment of the of dollar amounts for exemptions but does not make the effective dates of adjustments clear.

Professor Bell asked that if the Tentative Report on this piece is to be re-opened, that it be broadened generally. The Commission agreed and placed this project on the agenda for the next meeting.

Minutes of Commission Meeting

September 9, 2004

Page 2

Professor Garland observed that under the Bankruptcy Code, certain liens can be invalidated to the extent that they impair exemptions. If a debtor is entitled to an \$8,000 exemption and has only \$7,000 in personal property, then the lien does not attach. If the debtor has \$20,000, then the lien would attach to the excess over the \$8,000 exemption. Professor Garland found it unclear how the issue is to be dealt with under the Commission's current draft. This issue will be decided at next month's meeting.

U.C.C. Article 7

John Burke advised the Commission that Article 7 is very specific, and that the revision updates the language, provides for electronic documents of title and is consistent with UETA. Mr. Burke said that he had read the uniform law and that it looks good. He explained that it deals with contractual issues that come up with documents of title, explains the difference between negotiable and non-negotiable documents of title and indicates how negotiable documents may be negotiated. Mr. Burke also indicated that this revision cleans up the existing uniform language and eliminates obsolete trade terms. He noted that it yields to federal law and, in international transactions, to the Warsaw Pact and Hague-Visby rules.

Mr. Burke said he knows of no opposition to the Article and that eight states have enacted it.

Chairman Burstein asked Mr. Burke to make a comparative chart for the next meeting. Professor Garland requested a check of definitions. Commissioner Gagliardi asked for an update at the next meeting on what other states are doing.

Mr. Burke stated that Article 7 references revised Article 1, which contains the definitions and the general principles governing the Code. He said that if the Commission is going to recommend the adoption of revised Article 7, it may also wish to recommend revised Article 1.

Medical Peer Review

Judith Ungar said that the memorandum provided to the Commission summarizes the relevant New Jersey case law and other states' statutes. It does not make any recommendations. New Jersey is the only state which does not provide the protection of a privilege for materials in the course of medical peer review.

There was discussion of the current state of the law in New Jersey, and the possible benefits and detriments of creating a privilege for peer review materials and the opinions and conclusions generated by peer review committees. Professor Bell said that it would be helpful to know what supervision or constraints peer review committees operated under and to identify who reviews peer review committees. Chairman Burstein asked for more information on the chill factor (physicians' reluctance to criticize their

Minutes of Commission Meeting

September 9, 2004

Page 3

colleagues) and changes that might alter that attitude. Staff should draft a statute based on other states' provisions that the Commission can use as a beginning point in order to solicit feedback from the various individuals and groups who would be impacted by a change to the law.

Background Checks for School Employees

Mr. Cannel said that no comments had been received regarding the Tentative Report. Commissioner Gagliardi proposed releasing the Tentative Report as a Final Report. The Commission agreed.

Title 39

Laura Tharney advised the Commission that a meeting was scheduled to take place with representatives of the Motor Vehicle Commission before the end of the month. She said that draft documents, at the request of the Commission, were being distributed to traffic safety officers, municipal court judges and municipal court practitioners throughout the State. Mr. Cannel suggested that the Administrative Director of the Courts should be included in the list, also. Commissioner Gagliardi said that having the endorsement of the people mentioned, before the project gets to the Legislature, is helpful.

Weights and Measures

Commissioner Gagliardi indicated that he had received some preliminary feedback, but no negative comments, on this project since the last draft. The Commission requested that Staff submit this as a Tentative Report.

- Professor Bell requested that the following changes be made first:
1. Page 1, Section (1)(1)(h). system office. assistant superintendent.
 2. (j). should be random-**weight** package.
 3. Section 3-2(a). Take out first "and" and the "or."
 4. Section 3-2(e). Check out grammar.
 5. Page 7, Section 3-2(h). The section is based on current law and requires testing once in five years. That is that inconsistent with Section 3-4 which requires testing annually. Change (h) to require annual testing.
 6. Section 3-3(d), fourth line down. Add "or any combination of those methods."
 7. Page 9, Section 3-7(b). Add a comma after "stop use."

Minutes of Commission Meeting

September 9, 2004

Page 4

8. Page 10, Section 3-8(b). "City" should be "municipality."
9. Page 11, Section 3-10(b)(4). "false" – does this mean incorrect? Chairman Burstein said not to change it; it's a trade term.
10. Page 11, Section 3-11(a). Change "of a building" to "a residential complex." Commissioner Gagliardi said to say "building or complex."
11. Page 15, Section 4-10. The requirement that weighmasters be residents of NJ was questioned. Mr. Cannel said that the provision might not be constitutional. Chairman Burstein said to take it out.
12. Page 16, Section 4-14. Replace the reference to the ICC which no longer exists with "subject to federal legislation."
13. Page 17, Section 4-16. Change "the"; to "a".
14. Page 17, Section 5-1(c)(1). Change "buildings" to "residential complex."
15. Page 20, Section 6-3(a). Change "engaging" to "engage." In the section, compare commercial weigh equipment, subsection (a) with (b) and (c).
16. Page 20, Section 6-3(e). Obtaining a fee; not **of** a fee.
17. Commissioner Gagliardi pointed out that the chapter numbers are not correct. Mr. Cannel said he will fix the numbers and the names.
18. Page 24, (g). Add "to appear by the Court" after "ordered."
19. Page 26, Section 51-10-12. Commissioner Gagliardi said that the language at the top of the page appears to have been included in error. It will be deleted.
20. Page 27, Section 11-3. The last line has an extra comma.

Miscellaneous

The Commission discussed a modification to Title 1 of the statutes to give the Office of Legislative Services the power to rearrange and renumber statutory sections. Mr. Cannel will present a memo for the next meeting, generating a paper trail.

The next meeting of the Commission is scheduled for October 21st. The November 18th meeting may be rescheduled as a result of scheduling conflicts. Chairman

Minutes of Commission Meeting

September 9, 2004

Page 5

Burstein said to make a tentative schedule of meetings for 2005, to be held on the third Thursday of each month. The dates will be discussed at the next meeting.