MINUTES OF COMMISSION MEETING

November 17, 2011

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey were Chairman Vito A. Gagliardi, Jr., Commissioner Andrew Bunn, and Professor Bernard Bell of Rutgers University School of Law who attended on behalf of Commissioner John J. Farmer, Jr.

Also in attendance were Ellen Harnick, Center for Responsible Lending; David McMillin, Legal Services of New Jersey; Wesley Young, American Fair Credit Counsel (formerly TASC); Denise Walsh, Marcus, Brody, Ford & Kessler, L.L.C.; Ira Marcus, Marcus, Brody, Ford & Kessler L.L.C.; and Gianfranco A. Pietrafesa, Archer & Greiner, P.C.

Minutes

The Minutes were unanimously approved subject to the addition of a sentence at the end of the Minutes indicating the meeting was adjourned.

Equitable Distribution of Marital Property and the Elective Spousal Share

Alex Fineberg explained that, although no substantive changes had been made to the draft final report, added language explained that it would solve another problem. In addition to addressing issues that arise when a spouse dies in the midst of a divorce proceeding (specifically relating to the elective spousal share, intestacy, and rights of survivorship), subsequent research had revealed that the Commission's recommendations would also solve a problem that arose in cases such as *Grange v. Grange*, 160 *N.J. Super.* 153 (App. Div. 1978), which held that an order to sell marital property prior to a final judgment of divorce, even if for the purpose of ensuring the continued support of the parties, was invalid. Although the Supreme Court ultimately overruled *Grange* in *Randazzo v. Randazzo*, 185 *N.J.* 101 (2005), it did so solely on equitable grounds. Allowing a judge to order the equitable distribution of marital property at any time following the filing of a complaint would provide an express statutory justification for the position taken by *Randazzo*. Commissioner Bunn moved for release of the report in final form, seconded by Chairman Gagliardi and approved unanimously.

Uniform Limited Liability Company Act

Benjamin Hochberg explained that the Uniform Law Commission (ULC) released a Revised Limited Liability Company Act in 2006. A bill, sponsored by Senator Sarlo, adopts and streamlines most of the provisions in the uniform law. The bill slightly differs from the uniform law; those changes have been noted on the report. New Jersey now has a patchwork system of laws in effect since 1993.

Commissioner Bunn asked about the status of the bill. John Cannel said that Senator Sarlo's bill had been filed in June. Commissioner Bunn also asked whether Staff has contacted Senator Sarlo's staff. Mr. Cannel said that he had discussed with them the Commission's consideration of this project. Commissioner Bunn asked whether there was any umbrage taken by the Senator with regard to the Commission's involvement with this project. Mr. Cannel said that there was none and explained that the Bar thinks Commission support will be useful in moving the bill forward.

Franco Pietrafesa, the Chair of the Business Section of the New Jersey Bar Association, said that he had with him Denise Walsh and Ira Marcus, co-Chairs of the Business Entities Committee, both of whom had spent five years reviewing the statute and comparing the bill. Mr. Pietrafesa said that the NJLLCA is important for New Jersey and that they had encouraged Senator Sarlo to introduce the bill and are trying to get as many people as possible to support it. Chairman Gagliardi said that the report seems like a benefit to those for whom an LLC is an advantageous business entity. Mr. Pietrafesa replied that the process had been a lengthy one because he and his colleagues are volunteers. He added that he and his colleagues feel that they are naive about the legislative process and they do not know why the bill did not move out of committee. Mr. Pietrafesa said that he hopes that Commission support will help to move the bill. Chairman Gagliardi asked whether there was any opposition and Mr. Pietrafesa said there was not. Commissioner Bunn asked whether, when Mr. Pietrafesa did his review, he came up with any suggested changes to conform the uniform act to New Jersey law or whether he was satisfied with the uniform language. Mr. Pietrafesa said that he took the uniform language and modified it to conform to the best components of the New Jersey statute. They also adopted some language from the New Jersey corporate statutes so all of the best components of the corporate statute are also in the LLC legislation.

Mr. Marcus said that they first thought they could amend New Jersey's current LLC statute, but then they saw the Uniform Limited liability Company Act and thought it was better. Two members of the ULLCA drafting committee met with them to assist with a New Jersey version. They believe that the resulting product is much better than what exists now. Some additional changes may be appropriate, e.g., more remedies for deadlock/dissolution situations might be helpful, but the Bar wants to make conversion to the new statute as seamless as possible. Changes were already made so that the forms and terminology match our current law. This will enable New Jersey to be more business friendly without imposing a cost on New Jersey taxpayers.

Mr. Cannel added that Ben Hochberg had done extensive research in the literature and found nothing to indicate that anyone had objections to the law. Chairman Gagliardi said that if everyone thinks the law is this good, then Staff should release this as a tentative report and see what feedback we get. Unless opposition appears, this project can be considered as a final report in December.

Uninsured Motorist

At the last meeting, the Commission was concerned that someone other than an heir could act on behalf of an uninsured motorist and have a potential cause of action under *N.J.S.* 39:6A-4.5, the compulsory insurance statute. Keith Ronan modified the language of *N.J.S.* 39:6A-4.5 to clarify that the heirs of an uninsured motorist as well as any person acting on the motorist's behalf, lack a cause of action. Both Commissioner Bunn and Commissioner Bell, who commented on this issue at the last meeting, were in agreement that the changes made cover the concerns raised. Chairman Gagliardi said that the last line of the second paragraph on the first page, should read granted "certification" rather than "certiorari" because the New Jersey Supreme Court grants certification. With that change, Commissioner Bunn moved to release the report in tentative form, which motion was seconded by Commissioner Bell, and unanimously approved.

Workers' Compensation Claims

Chairman Gagliardi requested that this project be carried to December so that Staff may benefit from comments from Commissioner Kologi, who provided feedback and suggestions at the last meeting.

Uniform Military and Overseas Voters Act

Marna Brown explained that this project first began as a review of the uniform law. However, as the project progressed, Staff came to the conclusion that New Jersey already had a law for overseas voting that addressed many of the concerns raised by the uniform law, and it made more sense to incorporate portions of the uniform law into New Jersey's existing structure. In effect, the changes broaden the group of people considered to be overseas voters. Mechanisms for electronic voting already exist in our current law.

Commissioner Bunn asked whether there the military supports the uniform law. His concern is whether New Jersey law is consistent with federal law and military practice. He asked that Staff assure that the proposal does not conflict with the very important uniformity requirement. Ms. Brown said that she believes that New Jersey's law is consistent with federal law but Staff will verify this.

Chairman Gagliardi asked whether the Commission wants to release this as a tentative report now or wait until after Ms. Brown has received more certainty on this issue before releasing the report as tentative. Commissioner Bunn said that he just wants to be careful that we don't interfere with military procedure, and suggests that there probably is someone in the Pentagon who ensures military personnel can cast votes, and we should copy that procedure. Chairman Gagliardi agreed that this is a crucial issue and unless Staff suggested to the contrary, he preferred to hold the report until Staff has an answer from the military on the uniform procedure.

New Jersey Debt-Management Services Act

Chairman Gagliardi asked Laura Tharney to briefly bring the Commission up to date before the floor was turned over to the commenters present at the meeting. Ms. Tharney said that there were still key issues that remained to be decided. The Commission has not yet determined whether it would like to permit "for profits" to participate in debt management in New Jersey. The issue of the fees to be allowed for debt settlement also remains to be determined. The fee cap presently included in the report is 20% of the savings to the consumer,

In addition to addressing those issues, Ms. Tharney asked that the Commission consider changes to the report resulting from her meeting in Illinois. She explained that she also wanted to pass along comments from commenters who could not attend this meeting. Ms. Tharney explained that she would like the Commission to consider releasing the report as a final report, or advise her of the additional information that would assist the Commission in making the decisions still pending.

Ms. Tharney said that Staff had a number of contacts with the New Jersey State Bar Association, but that no comments had been provided. If any member of the Bar wished to voice an objection, they had a number of opportunities to do so and none had done so. The Attorney General's was provided with a copy of the draft report so that the language providing them with enforcement powers under the Act could be considered. No official comment was provided but Ms. Tharney did not anticipate an objection to the language providing for dual enforcement by the Department of Banking and Insurance and by the Office of the Attorney General. Her understanding is that the Office of the Attorney General has, in the past, brought actions in conjunction with DOBI. The focus of the two entities differs; DOBI tends to focus on licensure issues and the AG's office on consumer fraud issues. Allowing actions to be brought by either could be useful. The AG's office will have another opportunity to address any concerns they may have if this project is taken up by the Legislature. No representative from DOBI was able to attend the meeting, but Ms. Tharney was authorized to advise the Commission that DOBI does not object to the participation of for profit entities, property regulated and that DOBI welcomes a final version of the Commission's report.

Phil Heinemann, Executive Director of the Debt Management Credit Counseling Corp., advised in writing that Ms. Tharney' statements in the report about why non-profit entities do not engage in debt settlement are not accurate. The report presently indicates, based on the information received from commenters, that engaging in debt settlement would jeopardize the tax exempt status of non-profits. Mr. Heinemann advised that the primary reason non-profits do not offer debt settlement services is that the major banks had made it clear that if the non-profits provide debt settlement services, or affiliate with entities that do so, the banks will cease paying their fair-share contribution and will stop offering debt management benefits to the organization's clients. Mr. Heinemann also said that the requirement in Section 5b(5)(B) on page 13 that the provider supply a certification that the salaries and expenses it pays are reasonable compared to those incurred by comparable organizations is unduly burdensome. Ms. Tharney explained that the requirement is included in the current law, and that Staff does not recommend changing it. Mr. Heinemann also suggested that licensees who are bona fide non-profits should be able to hold consumer funds in trust until disbursement if they are engaging in debt settlement. Ms. Tharney explained that the ULC wrestled with this issue and that Staff had followed its lead. Mr. Heniemann also pointed out that "credit counseling services" is used in the report but not defined there, so Ms. Tharney said that she would like to incorporate the definition contained in the New Jersey current law.

NovaDebt, in correspondence to the Commission, applauded the Commission's efforts. The letter suggested that although the IRS does not prohibit nonprofit entities from engaging in debt settlement, other considerations may stop it from doing so. The letter also expressed concern that certain portions of Section 10d on page 23 (d(3), d(4) and d(5)) are not applicable to debt management, only to debt settlement, and might unduly confuse consumers if left in their current position in the report. The subsections in question pertain to notifications that must be provided to consumers before they enter into any debt management plan. The language may be more confusing to consumers than helpful as a result of the differences between debt servicing and debt management. For example, if a consumer is in a debt management plan, all of that person's debt would be included in the plan. Telling that consumer that this may not stop all creditor activity, including lawsuits and garnishments, might be both inaccurate and confusing. Moving the language from Section 10d to 10e could eliminate potential confusion.

The Commission discussion suggested that d(3) may be appropriate for both debt management and debt settlement. Commissioner Bunn stated that d(4) is more appropriate for the debt settlement context but he is not sure about d(5), expressing concern that engaging in debt management does not provide automatic protection for subsequently incurred debts, for example. He said that d(5) does not worry him as much as d(4). Commissioner Bell suggested that maybe DOBI could vary some of the warnings as business practices change. Ms. Tharney said that modifying the language may be appropriate and that commenter suggestions would be helpful.

Scott Johnson, CEO of US Debt Resolve indicated in correspondence that he supports a fee cap of 15% tied to consumer savings. His company is a for-profit debt settlement company and he indicated that the greatest success in the debt settlement model is when the fee is performance based and tied to savings. Mr. Johnson also said that for a debt settlement client to "graduate", the cost to the provider comes in under $3,000. He explained that approximately 57% of the cost to the provider is for labor and approximately 17% is attributable to sales and marketing.

Doug Miskew of CareOne reiterated, in correspondence, that it is his hope that the final report will regulate both for profit and nonprofit entities. He added that if the Commission is unable to reach a consensus on the fee issue, the Commission could bracket the fee and provide the narrative as guidance for the Legislature. Mr. Miskew provided an article for Commission review which states that credit counseling does not work the way that it should because of the conflict of interest on the part of the providers who receive payments from the banks

Ron LeVine, Esq., a bankruptcy attorney, advised Ms. Tharney in a letter that he opposes the participation of for-profits. He also addressed "misconceptions" about bankruptcy and challenges the fee assertions made by debt settlement companies. Other commenters suggested that changes to the fees allowed to be charged by providers should be by legislation and not by regulation by DOBI.

As for the specific changes to the report, Ms. Tharney advised that on page 9, Section 4b should read, "Any person who engages in the business of debt management, and is based in New Jersey or has an office in this State, shall be licensed pursuant to this act whether they provided services in New Jersey or not." In Illinois and Maine there were some entities claiming not to be doing business in those states despite the fact that they were located there. If the Commission wishes to incorporate this change, Section 4g on page 10 would also have to be changed. Wesley Young of American Fair Credit Counsel said that there was a problem with licensing companies solely because they have a presence in New Jersey even if they are not operating here. If a provider is based in New Jersey but serving clients in Maryland, it could be subject to two very different statutory schemes with potentially conflicting requirements for the same transaction with the same consumer. Chairman Gagliardi said that in other circumstances, companies do business in multiple states and they manage to deal with differing standards. Mr. Young said that under these circumstances, a company could have to abide by two different standards for a single consumer. He added that a company can abide by different state laws so long as there is only one applicable law per consumer. Mr. Cannel suggested that the report clarify that consumer protection is governed by the consumer's location but licensing is governed by New Jersey law. Commissioner Bunn asked whether there was any discussion of non-uniformity in licensing requirements in Illinois or Maine. Ms. Tharney said there had been none. Commissioner Bunn asked if the report could have two different sets of regulations, one for companies doing business here (including the detailed provisions) and another for companies who are simply located here. Mr. Young responded that if the report can separate regulating the transaction from regulating the business, it will not be a problem.

Commissioner Bell said that the company needs to comply with the state that governs the transaction. If a New Jersey company licensed here is dealing with a Maryland consumer, and the company violates Maryland consumer law, New Jersey could pull the company's license in New Jersey. He suggested reciprocity for this. Commissioner Bunn said that the report has to make it explicit that the law is to follow the residency of the debtor. Commissioner Bunn said that he did not want to create an incentive for providers to locate out of state because our state requirements are onerous, but at the same time he did not want to project New Jersey as a refuge for scoundrels. Commissioner Bell suggested that there should be dual licensure standards, distinguishing between companies merely located here and those operating here, but that New Jersey should have the power to revoke a license even if the company is not doing business in New Jersey. Commissioner Bell will draft language and send it to Ms. Tharney.

Ms. Tharney explained that on page 33, section 15i, the fee cap was set at 20% of the savings to the consumer, calculated based on the difference between the principal amount of the debt at the time it was enrolled in a plan, and the amount actually paid to the creditor to satisfy the debt. Maine has a 15% fee cap, but it is calculated differently. In Maine, the provider may take 15% of the difference between the amount paid to the creditor and the amount to which the debt has grown at the time of the settlement. Illinois has a 15% fee cap that is calculated in the same manner as proposed for New Jersey, but Illinois does not have a single for profit provider lawfully operating in the state. Connecticut has a 10% of savings cap and has two for-profit service providers lawfully operating there. Oregon, which has a cap of 15% of total enrolled debt, has two for profit debt settlement companies. Of the states reviewed, Maine is the one state with has more than one or two for profit entities lawfully operating.

Commissioner Bunn asked why the amount of the debt balloons during debt settlement. Ms. Tharney explained that for debt settlement, the consumer needs to accumulate a sum of money and then the provider focuses on paying debts one at a time. The consumer must stop payments to all creditors until the consumer has enough saved to make an offer to a creditor. When one debt is paid, the accumulation process must start over for the next creditor. In the meantime, interest and fees continue to accrue with each remaining creditor as the debts are addressed one by one. The report follows the Illinois approach, focusing on the difference between the debt upon enrollment and the amount paid out to creditors so that it is the net reduction that the consumer receives that forms the basis for the fee payment. Ms. Tharney explained that Illinois has a 15% cap; no registered for-profits providing services, and its fee cap has been described as a deterrent.

Mr. Young said the fee cap issue is a key concern for his organization. He explained that the difference between a fee cap of 15% and 20% doesn't matter because the members of his organization cannot do business at that level. Mr. Young said that the difference between debt settlement and nonprofit credit counselors is that the fee paid to nonprofits for $25,000 worth of debt is three to four times greater than the fees a for profit entity can charge. Mr. Young said that he did not know how Mr. Johnson's company manages to do business with a 15% fee cap. He said that Illinois is an example of a fee cap that is too low. Although it passed its law in 2010, there are no licensees at the present time. Mr. Young's organization has a member in Maine, but other licensees are licensed there because of the settlement of enforcement actions and he does not think those companies are enrolling new consumers there.

Commissioner Bunn asked whether the members of Mr. Young's organization charge based on a percentage of savings. Mr. Young said that some of his members charge a flat fee and some charge a percentage-based fee but in both cases, the providers cannot charge unless they are successful at negotiating settlements. He added that the service is really all success-fee based. Commissioner Bunn asked whether Mr. Young's organization has surveyed its members to see what they charge. Mr. Young said that approximately 20-25% of them charge a flat fee and about 45% of them charge a contingency based on net savings to the consumer. Mr. Young also suggested that it is a mistake to calculate the benefit to the consumer solely is by looking at the debt the consumer brought to the program because doing so fails to consider the time value of money. Any option the consumer chooses will result in the consumer incurring interest. Mr. Young said that in any option other than a Chapter 7 bankruptcy, the consumer will ultimately pay more to settle debts than he or she came into the program with. If the consumer goes to a nonprofit organization with $10,000 of debt, that consumer will end up paying three to four times that amount when all of the debts are resolved.

John Cannel said that CareOne said they can live with a 30% cap, rather than requiring a payment of 40 to 45%. CareOne's willingness to do so was what convinced the ULC to accept that as the standard. There is no magic to 30% just because the ULC chose that number, it is just a number that one large company can work with. Commissioner Bell said that this could create a monopoly. Mr. Cannel added that it may have been that CareOne gave a number that it could live with and there may be other providers who can live with it. So long as others can compete, all that is being regulated is the price. Mr. Young said that he was concerned with a monopoly eliminating the competition. Mr. Cannel said that Staff felt that a fee cap of 30% was too high while others felt that it was a good number if CareOne was coming in at that level. Mr. Young said that some states that had the 30% of savings fee cap in place did so prior to the FTC rule, and he did not know anyone operating at that level besides CareOne.

Ms. Harnick said that, as the Commission knows, she would prefer that the Commission not move forward with this project. If the Commission does so, however, the relevant issue is not at what price will the companies make money but can a fee cap be set that will not leave consumers worse off.

Chairman Gagliardi said that there were not enough Commission members present to decide the two remaining important issues, so the questions of for profit participation and fee cap will be decided in January. Chairman Gagliardi said that he did not want to inconvenience commenters by having them attend several more meetings, but also did not want to preclude them from commenting.

Ms. Tharney said the other remaining issues could be resolved quickly. On page 38 in section 17, there is a clarification that if an agreement is void, that agreement cannot be enforced by any person. The consensus of those present was that the provision was acceptable. On page 40, in section 18a (17), the language clarifies that obtaining a waiver of the protections or obligations imposed by the act is prohibited, based on the Illinois statute. Commissioner Bunn said that he would prefer that the subsection begin with "request or obtain". The Commission agreed. On pages 43-43, the language was changed to clarify that the administrator or the attorney general can pursue bad actors. This change was acceptable to the Commission.

On page 44, in subsection g., and on page 48, reference is made to the Debt Management Consumer Protection Fund which is supposed to be available to provide restitution to consumers who suffered monetary loss as a result of the actions of a provider if other funds and resources are not. The Fund is created by fines imposed on unlicensed providers. Chairman Gagliardi asked if anyone objected. Ms. Tharney added that one of the things Illinois suggested that was not in the draft is that the Fund could be used for enforcement but Staff elected to focus on consumer protection since the amount available in the Fund is likely to be limited. The Commission agreed to retain provisions regarding the Fund but to focus on consumer protection and not enforcement.

Ms. Tharney eliminated duplicative language in subsection 5 on page 13, which the Commission approved. On page 33, in subsection j. the language was changed to include references to domestic partners and partners in a civil union as well as spouses. On page 39, in subsection a., Ms. Tharney added a new subsection a.(14)(B) which prohibits a provider from representing that it is affiliated with a government entity unless it can document such affiliation. The Commission approved these changes.

Mr. Cannel said there were two remaining issues: whether "for-profits" should be allowed and what the fee cap should be. These issues would be resolved in January. Chairman Gagliardi asked whether there were any closing remarks from commenters. Ms. Harnick said that her organization thinks that New Jersey has been right in declining to allow for-profit entities to engage in debt settlement in New Jersey. Even if it is true that an individual's debt will continue to grow in almost every debt-reduction program, two things make debt settlement particularly problematic: (1) the vast majority of consumers will not complete the program because of a cascade of lawsuits (this is unique to debt settlement, unlike bankruptcy or debt management) and (2) debt accretion. She thinks that industry criticism of her research is defective and she suggested that even if the model were revised pursuant to Mr. Young's comments, the figures would still demonstrate that for profit debt settlement is a disaster for most consumers who enter it. Ms. Harnick said that she can explain this in more detail to the Commission in January orally or in writing.

Chairman Gagliardi said that given the amount of time before January, it would be beneficial for any written material she wishes to provide to be forwarded in advance. Commission Bunn suggested that commenters submit material on only two issues, the first being whether or not to have for-profit companies operating legally in the state and the second being what the fees should be. Ms. Tharney explained that the submission should be provided to Staff in time for the Commission's filing day deadlines.

Commissioner Bell suggested that one possible option is to allow for-profits and determine a fee cap but include a sunset provision so that, in five years, unless the Legislature reauthorizes it, the provision authorizing their participation would disappear. New Jersey would then be able to obtain some data and experience and if the concept is working badly, it would end automatically. Chairman Gagliardi said he liked this suggestion and asked Staff to draft language accordingly.

Mr. McMillin said that Legal Services had yet to see anyone helped by debt settlement companies. He explained that it has been more than a year since the FTC rule and yet there are no healthy debt settlement companies demonstrably helping consumers. He added that the widespread use of the attorney model is a problem that has been noted in several publications, including a Business Week article discussing the extent of the industry's efforts to make an "end run" around the FTC fee ban by affiliating with attorneys. As far as the difference in impact on credit scoring between a bankruptcy and debt settlement, in reference to Commissioner Bell's question last meeting, there have been no formal studies of the comparative affect. Mr. McMillin explained that there are just not enough people who complete debt settlement to generate sufficient numbers. He added that there is a big drop in a credit score 90 days after a default, as many as 65-125 points for debt settlement. Once an account goes to collection, there is no going back. The score drops less for each additional account, but it does continue to drop with each. Mr. McMillin found a FICO score estimator online and plugged in various examples. Debt settlement is not an effective way to preserve your credit score, it will harm it. Bankruptcy is a worthy alternative that will hurt your score, but do less damage overall. In addition, bankruptcy is available to almost anyone who would file debt settlement and, unlike with debt settlement, with bankruptcy there is no tax liability from debt discharge. Commissioner Bunn asked whether there is a mandatory disclosure of the tax impact of debt settlement in the draft report because the Commission would be remiss if it did not include it. Ms. Tharney said that it such a disclosure is required by the report.

Mr. McMillin said that Legal Service's experience with the nonprofits is that they are willing to recommend bankruptcy as an alternative. A problem with for-profits is a pattern of not discussing bankruptcy as an alternative when it may be appropriate. Fees are lower for bankruptcy than debt settlement and overall it is better. Ms. Tharney said that there is an article in the packet prepared for the Commission that discusses a lawsuit against a nonprofit claiming that it misrepresents bankruptcy to consumers, which suggests that there may be issues with both for profits and nonprofits not recommending bankruptcy when appropriate. Mr. McMillin said that the only debt that a debt settlement company could handle that bankruptcy cannot is an unsecured debt where fraud can be proved. Fraud would make the debt non-dischargeable in bankruptcy. This is a very small category. Mr. Young explained that the members of his organization would not accept a debt for settlement that was fraudulent in any event. Commissioner Bell said that he did not believe a credit card company would settle fraudulent debts.

Mr. Young explained that many people do not want to file bankruptcy. He added that he has seen testimonials regarding successful debt settlement cases. Mr. Young stressed that there needs to be a service that reduces principal, adding that the debt settlement success rate is comparable to the success rate for Chapter 13 bankruptcies. He added that looking for a “success rate” above 50% is not practical for any debt relief program. A consumer might quit a program if the program manages to resolve a few accounts because the consumer feels that they can handle the rest on their own. Consumer choice is important. AFCC supports licensing and requirements imposed on all debt-reduction entities. Mr. Young said that as long as the consumer is informed, why not let the consumer make the choice. Consumers do not have to pay fees until they get a result they like. He added that Illinois and Maine should not be held up as model states because not enough companies are registered there. Instead, Mr. Young noted that Colorado, Missouri, Texas, and Maryland all passed laws based on the FTC rule and he asked the Commission to take a look at the laws of those states.

Ms. Tharney asked the Commission if there was more that it needed regarding the two issues to be decided. Chairman Gagliardi said that perhaps a concise summary of other states’ experiences would be helpful. Commissioner Bunn also asked for FTC or other federal government updated information if available.

Recording of Mortgage Assignments

John Cannel said that following the recent New Jersey Law Journal article about this project, commenters have expressed more interest. By December or January, Staff should have results. Thus far, he has not heard of any antagonism toward the project. Mr. Cannel said he would be meeting with representatives of the New Jersey Bankers Association, MERS and the Land Title Association. By December or January, he expects to have more information.

Miscellaneous

The next meeting was approved for January 19, 2012 at 10 a.m. Other meeting dates will be decided at the next meeting. Mr. Cannel reported that the Trade Secrets bill had gone back to the Assembly and explained that Staff was advised that it should be on a board list before year end. Ms. Brown reported that she had met with OLS and the AOC to discuss the pejorative terms bill which was in bill drafting.

The meeting was adjourned on motion by Commissioner Bunn which was seconded by Commissioner Bell.