

**MINUTES OF COMMISSION MEETING**  
**June 15, 2000**

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, Peter Buchsbaum, and Vito Gagliardi, Jr. Grace Bertone attended on behalf of Commissioner Rayman Solomon and Professor William Garland attended on behalf of Commissioner Patrick Hobbs.

Also attending were: Kris Ann Cappelluti, Riker Danzig; Maureen Davia, Bell Atlantic; Oren Rosenthal, Princeton Public Affairs Group; Carol G. Jacobson, Office of the Attorney General; David C. Kane, Sterns & Weinwroth; Jeanne O'Connor, Seton Hall Law School; Carol Roehrenbeck, New Jersey Library Association, American Association of Law Libraries and Rutgers Law Library; Patricia Tumulty, New Jersey Library Association; Marjorie Crawford, Paul Axel-Lute, Susana Camargo-Pohl, and Daniel Campbell, Rutgers Law Library.

Minutes

The Commission asked staff to make three corrections to the Minutes of May 25, 2000 meeting: Commissioner Gagliardi is referred to incorrectly as Professor on page 4, first full paragraph; on the same page, second line of paragraph, replace verb "right" with "need" in reference to municipality; and on page 6, first paragraph, delete the word "was". The Commission approved the minutes as corrected.

UCITA

Maureen Garde addressed the June 5, 2000 memorandum and its recommendation to exempt libraries from the scope of UCITA. She noted that UCITA already exempts certain industries. The Association of Libraries approves exemption. The worst-case scenario is that if exempted from UCITA, libraries would be in the same position as they are now. UCITA, in Ms. Garde's opinion, undermines values of federal copyright law. Under UCITA, libraries cannot negotiate terms of standard contract and might become bound to contract terms without legitimate consent.

Carol Roehrenbeck, American Association of Law Libraries, stated that a clerk might open mail and trigger effectiveness of a contract term affecting a library's right to lend. She also noted that copyright protections cover inter-library loans, and that UCITA may have an adverse effect on that practice. The Commission did not vote on the recommendation to exempt, but the Chairman expressed the view that the Commission was favorably disposed to adopt the

recommendation. Pat Tumulty of the New Jersey Library Association stated that her group also favors exemption from UCITA. She submitted a letter favoring exclusion of libraries on behalf of the American Association of Law Libraries, dated June 14, 2000.

The recommendation to exempt libraries tracks the definition of library used in the federal Copyright Act; it refers to public libraries as opposed to private libraries. Bell Atlantic has requested additional language in the exemption provisions to clarify that its activities are covered; NCCUSL does not oppose it. Ms. Garde will look further at the definition of a library in federal Copyright law.

Chairman Burstein said that at the next meeting, the Commission will review UCITA at greater length. He asked staff to provide a list of sections considered untouchable and essential to the Act.

#### UCIOA

Mr. Cannel said that Professor Garland and he had reviewed new Section 320 dealing with priority of association liens over certain types of mortgages. They improved the language and eliminated the separate section for cooperatives, since the Commission had earlier determined that a cooperative should be treated as real property. Therefore, eviction action, that is, foreclosure, should be identical between cooperative and condominium ownership.

Chairman Burstein noted a minor typo in the commentary; page 3, last line of first full paragraph "or" should be "of;" same page, second full paragraph, fourth line, rules "judged by" should replace "by judged;" page 16, in comment at bottom, delete the third word, "is;" and page 30, second line of comment, "Trche" should be "Force."

Commissioner Gagliardi noted that Section 320(d) on page 28 contained a renegade comma after the word "meeting" and that Section 311(a) on page 29 required the addition of a comma after "subsection ( c )."

The Commission approved the project as a Tentative Report and asked Staff to send it out for comment.

### Games of Chance

Chairman Burstein stated that an introduction should explain why municipalities have been removed from the licensing and regulating of the gaming industry. Commissioner Gagliardi asked that changes made to documents be redlined so that they can be recognized easily. Commissioner Gagliardi recommended that in Section 1( c ), second line, "beyond their appointed terms" replace "after their terms terminate." Section 1(d) should be changed to read: "The governor shall fill any vacancies which arise for unexpired terms." Section C-7 is unclear regarding when the licensing Commission can examine gaming establishments and under what circumstances it can revoke a license.

The Commission asked staff to rework Section C-7 to specify warrant requirements, and to set circumstances under which the Commission may suspend a license.

In Section 3, Duties of Commission, Subsection (g) states that in order to approve persons or corporations supplying equipment for games of chance the Commission must grant the application unless the applicant is not of good moral character and not free from conviction of crime. Chairman Burstein asked for improved language. This section should be made consistent with Section B-12, which contains a comparable section dealing with corporate applicants. The concern is with fairness of equipment, and non-profit nature of rental of hall, not with the character of supplier or rentor. Mr. Cannel suggested consulting with the games Commission. Commissioner Buchsbaum questioned the licensing approval approach. The statute presumes the gaming commission will grant the license unless it finds reason to deny it.

In addition, the Commission asked staff to add an omitted "s" to the word "game" in Section C-14(a)(2) dealing with advertising regulation.

In Section R-5(a), Commissioner Buchsbaum asked about the reference to Sunday municipal license. The Commission preferred the language: "on Sunday unless permitted by municipal ordinance."

Commissioner Buchsbaum questioned the use of the term "bookkeeper" as opposed to "accountant" in Section R-9(a) and (b). The Commission decided to retain both terms and asked staff to re-examine the section.

Professor Garland raised a question about "edible seafood" in Section R-8(b). Judith Ungar stated that this Subsection is important; the health department was concerned with risks of awarding food as prizes. She explained that the prize is awarded by a gift certificate redeemable for edible seafood.

The Commission asked staff to prepare a revised draft for the next meeting.

### UCC 9 Assignment of Structured Settlements

In Owen v. CNA, the New Jersey Appellate Division decided that Article 9-314 does not apply to structured settlement agreements; therefore, the settlement agreement may prohibit assignments of the proceeds under that agreement. The dissenting opinion reached a different conclusion based on the findings and reasons of the Superior Court holding that the agreement is a general intangible assignable under UCC 9.

A bill is pending in New Jersey that would discourage, if not in effect, prohibit the assignment of proceeds of structured settlement agreements. The bill would permit an assignment only if absolutely necessary to avoid imminent financial disaster. The bill is an ornate statute requiring disclosures, etc. The seller must have advice of legal and tax counsel.

The National Structured Settlements Trade Association (NSSTA) wrote the Commission on June 14, 2000 repeating the argument that structured settlement agreements are necessary for the welfare of tort victims. The insurance companies maintain that assignments would impose unexpected transactions costs and increase their risk of litigation.

Revised Article 9 clearly invalidates any non-assignment provision contained in a structured settlement agreement. The theory is that the agreement is not based on a tort claim but a final court judgment. Therefore the structured settlement agreement, like any right to payment, is a general intangible and properly considered Article 9 collateral. In addition, Revised Article 9 also does not contain language to support the Owen court's result.

Mr. Burke called Sherry L. Foley, the attorney for Ms. Owen and learned that the tort victim was neither seriously injured nor permanently injured. She returned to work. Subsequently, due to unrelated factors, she developed multiple sclerosis. She needed money immediately to meet current costs. Ms.

Foley also maintained that structured settlement agreements do not always involve permanently incapacitated victims and that an attorney usually represents the seller.

Professor Garland noted that the Senate bill is extremely cumbersome. Mr. Cannel stated that we allow people to do financial things against their interests and asked why special attention is paid to this issue. In Owen, the case involved a situation where the proceeds came in dribs and drabs preventing the tort victim from becoming eligible for Medicaid. The value of the total payment due often is not sufficient for paying for medical and regular expenses.

Commissioner Gagliardi asked if staff could learn what the real rationale is of an insurer's opposition to assignment of structured settlement agreements. He noted that it couldn't be the welfare of the tort victim since often the insurer spends years in litigation to avoid paying the tort victim anything at all. The administrative inconvenience of tax withholding seemed to be the real issue. In the Owen case, the testifying insurance official stated that the additional costs of administering the agreement and the increased risk of litigation were the reasons the insurer opposed the assignment.

Mr. Burke explained that an insurer pays out the same amount of money under an assignment but to a different person, the assignee. Chairman Burstein stated that the more information about the consequences of the assignment is needed to make a judgment.

Chairman Burstein stated that, though the victim has advice of counsel in the initial litigation, the victim might not have benefit of counsel in its negotiations with the factor. Mr. Burke noted that Ms. Foley stated otherwise; normally the seller has the advice of counsel.

The Commission asked staff to invite the following parties interested in this legal issue to attend a Commission meeting to advise on the project: (1) plaintiff's group, (2) factor's group and (3) the National Structured Settlements Trade Association.

#### Federal Law on Electronic Contracts and Signatures

Ms. Garde discussed the pending federal legislation validating electronic contracting and electronic signatures. Given this law, Ms. Garde stated that she

had studied whether it was still worthwhile enacting UETA to avoid the totality of federal preemption.

Under federal legislation, the state can get out from under some provisions of federal law if the state adopts the Official Text of UETA. Mr. Burke asked Ms. Garde whether it was true that if a state adopts UETA the state does free itself substantially from effects of federal preemption.

The general effective date of the federal law is October 1, 2000. To obtain benefits of preemption and retain consistency in law, New Jersey should adopt UETA before that date. Federal law contains consumer protection provisions. Ms. Garde state that any amendment to UETA such as allowing a state agency to adopt regulations governing electronic records, must not run afoul of the limitation of adopting the Official Text of UETA. Ms. Garde also suggested that the Commission examine whether forms of identification should be required for electronic notarization.

Effects of the Act on recordation are not clear. Counties cannot accept electronic records; yet federal law says that an electronic deed/mortgage is valid. There is some authority that if a document cannot be recorded, it is still effective against third parties and binding against the world. Recordation applies only to documents. This issue must be addressed. Staff reads UETA to allow counties to require paper instruments with original signatures; the federal law indicates otherwise.

#### Miscellaneous

The next meeting was scheduled for July 20, 2000.