

MINUTES OF COMMISSION MEETING
December 14, 2000

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, Hugo Pfaltz, Jr. and Vito Gagliardi, Jr. Professor William Garland attended on behalf of Commissioner Patrick Hobbs.

Also attending was Charles Centinaro, Assistant Counsel, from the Office of Governor's Counsel.

Minutes

The Commission asked staff to correct the language on page 3 of the minutes to "where charity is located." The Commission then approved the Minutes of the November 16, 2000 meeting as corrected.

Structured Settlements

Commissioner Gagliardi questioned the language of Section 4(c) stating that a court's finding that the transfer is voluntary is presumed to be in the payee's best interest. Did that create a rebuttable presumption or was it intended to have another effect? Staff responded that the language was intended to create a rebuttable presumption. Commissioner Gagliardi, with the Commission's support, asked staff to state exactly what they intended to say, i.e., that the finding creates a rebuttable presumption.

Under the Commission's proposal, no one effectively has the ability to rebut the presumption except for any named beneficiaries. In this regard, other statutes are broader, requiring service upon the payee's dependents and other "interested parties."

As to choice of law, staff explained that the Commission proposal applies to New Jersey residents who enter into transfer agreements while residing in New Jersey. Consequently, the resident may have entered into a structured settlement agreement itself in a foreign jurisdiction. The logic is sound. It is the New Jersey resident entering into the transfer agreement who poses the risk of becoming a public ward; therefore justifying the state's review of the transfer agreement. However, language in the proposal is unclear; the Act should specify that it applies to New Jersey residents who enter into a transfer agreement in New Jersey.

The Commission asked staff to add "any" before the word "beneficiary" in Section 4(a). Staff also indicated that that section would apply only to named irrevocable beneficiaries.

Staff reported that Sherry L. Foley had submitted the following comments to the Commission: (1) anti-assignment language may be contained not only in a structured settlement agreement but also in other documents involved in the transaction; (2) the Commission's proposal lacked a provision requiring the insurance company to acknowledge in writing that it would honor the assignment within three day of the court order; (3) transfer agreement should apply to part of the payments under the structured settlement agreement as well as to all payments. The Commission adopted her suggestions except for the one on division of payments between the payee and the transferee.

The Commission proposed the following language: Anti-assignment language "effecting a structured settlement" is ineffective under this Act. Also proposed was language to replace anti-assignment with any restraint on transfer in order to cover any alienations other than assignments.

Staff reported on the progress of Senate Bill 944 dealing with structured settlement transfer agreements. The Senate had recently approved amendments to the original bill. These amendments effectively incorporated the terms of the Structured Settlement Transfer Model Act supported by the National Structured Settlement Trade Association and National Association of Settlement Purchasers. As amended, S944 uses the Model Act's "best interest" standard, its definitions and its coverage of worker's compensation payments. The Commission's proposal does not apply to worker's compensation payments.

In addition, S944 contains expansive jurisdiction provisions permitting the transferee to bring the application in his location or that of the payee or that of the insurance company. This provision might lead to inconvenience for the payee.

The Commission asked staff to learn how payments are made under the worker's compensation system. The Commission also asked staff to engage Senator Cardinale directly respecting the differences between his bill and that of the Commission.

As to Section 9, the Commission asked staff to clarify that trigger is entry into "transfer agreement."

The Commission voted to release report as a Tentative Report relating to transfers to structured settlement payment rights.

Legalized Games of Chance

Ms. Ungar reported on her three hour meeting with Ronnie Hursthouse, Office of Consumer Protection and Bill York, Director of the Legalized Games of Chance. In addition, she noted that a revised draft contained all of the corrections that the Commission had requested. Many changes were based on the results of the meeting.

The Commission's proposal does not contain an overall deregulation of gaming. Rather, it contains a moderate set of recommendations, the most important of which is taking municipalities out of the licensing process. To date, no group has opposed this approach.

Ms. Ungar had reworked several definitions to reflect expert information and she had faithfully followed the New Jersey constitutional language on Bingo and Raffles. The commission asked her to just reference the New Jersey Constitution provision by citation alone rather than repeat it verbatim in the statute.

The Commission asked staff to qualify that the term "bona fide veterans" found in Section 2-6(b)(1) refers only to veterans of the United States military.

It was further noted that UETA would permit and validate electronic bingo games.

The Commission approved the draft for release as a Tentative Report.

Recording Acts

Mr. Cannel stated that his memorandum contained a first run at a general revision of the recording statutes and at preparing for the eventuality of accepting electronic filings. He has consulted with Joanne Rajoppi, the Union County Clerk, and that she had offered assistance to the Commission in acquiring information as to recording practices.

As to future drafts, the Commission asked staff to indicate provisions where change in substance was intended and to indicate provisions where there is change but no change of substance is intended.

Miscellaneous

The next meeting is scheduled for January 18, 2001.