

**MINUTES OF COMMISSION MEETING**  
**March 13, 2003**

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 Peter A. Buchsbaum, Hugo M. Pfaltz, Jr. and Vito A. Gagliardi, Jr. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch, Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs and Grace Bertone, McElroy, Mulvaney & Deutsch, attended on behalf of Rayman Solomon.

Also present were David Ewan, Consultant to the New Jersey Land Title Association and Renee Steinhagen of the New Jersey Appleseed Public Interest Law Center.

Minutes

The February minutes were corrected on page three, in the first full paragraph, by changing the reference to combining "regular and school board elections" should refer to combining nonpartisan May elections and April school board elections. The corrected minutes were approved unanimously.

The Commission decided that the minutes should be included on the Commission's website after they have been approved by the Commission.

Acknowledgement

Commissioner Gagliardi, conducting the meeting as Vice-Chairman, acknowledged, on behalf of the Commission, the retirement of Commissioner Hugo M. Pfaltz, Jr. from the Commission. This was Commissioner Pfaltz's final meeting and Commissioner Gagliardi conveyed the Commission's gratitude for his years of service.

Election Law

Since there were guests in attendance, Commissioner Gagliardi opened the discussion of Election Law by asking for comments from the public.

Renee Steinhagen, of the New Jersey Appleseed Public Interest Law Center said that she had just come from a meeting run by the League of Women Voters at which the bills that had been introduced based on the New Jersey Law Revision Commission's report were discussed. She noted that the State of New Jersey has

not yet assembled a Commission to put together a State plan to comply with the federal Help America Vote Act (HAVA). She indicated that there is support for many of the provisions contained in the Commission Report, but asked that the Commission focus on some additional issues. According to Ms. Steinhagen, these issues may not have been perceived as important before, but they are now "hot button issues". They include mail-in vs. in-person registration, identification for first-time federal voters, and provisional balloting. Ms. Steinhagen suggested that these issues "got lost" in the Report. She noted that New Jersey will have a statewide registration database, and that the advocacy community supports the creation of a statewide commission. She suggested that the statewide commission should be in charge of registration and training, since there is considerable variation throughout the State as to the information that is provided to voters when they have questions. Ms. Steinhagen suggested that a statewide agency to implement various aspects of voting would not take away the jobs of the County Clerks. She also said that the advocacy community would be focusing its efforts on obtaining federal money for New Jersey.

Mr. Cannel explained that after a conversation with Ms. Steinhagen, he reviewed the language in the Report, and that with regard to voter registration, dropping registration information off with one of the listed organizations is not counted as a mail-in registration, but an in-person registration, thus limiting the number of people who will be deemed to have registered by mail. With regard to the issue of provisional ballots used for first-time voters who have registered by mail and not produced identification at the polling place, Mr. Cannel noted that the federal law does not provide any guidance. Ms. Steinhagen said that other states are trying to limit the group of persons who will be subject to the identification provisions while expanding the types of identification that will be acceptable. She suggested that the Commission set the standards regarding what is to be considered valid identification, and who will be subject to the provisions of the new statutory language.

Commissioner Gagliardi observed that with regard to provisional ballots, the Commission's Report leaves many decisions to the Courts. He also said that the Commission Report should indicate each time a provision is required by federal law.

Commissioner Buchsbaum suggested that changes be made to the Executive Summary as well: to make it more persuasive by highlighting the requirements of the federal law and the changes made to comply with those requirements. He explained that once you make it clear that there are certain

things required by federal law, many of the other changes follow logically. Since the suggestions contained in the Appleseed Report would require considerable modifications to the Commission's Report, there is a legitimate question as to whether that is appropriate at this time.

As concerns the specific revisions presented to the Commission for this meeting, the Commission approved the changes to Section 1-8.

Ms. Steinhagen objected to the changes to Section 2-3, explaining that the Court had imposed very strict requirements on what organization might be said to be a political party. Commissioner Gagliardi asked the Commission whether they would prefer to take the proposed language out, leave it in, or change it to reflect the language of the recent determination of the Court. Professor Bell moved to leave the language in its present form, the motion was seconded, and unanimously approved.

Mr. Cannel explained that with regard to Sections 4-7 and 4-8, there was an oral tradition that sometimes allowed grouping candidates and sometimes did not. At the Senate Committee hearing, there was a suggestion that this issue was determined by case law. The new proposed language regularizes and standardizes the requirements, and provides for free grouping of candidates. Ms. Steinhagen noted that there were two reform parties fighting over this during the CAAP litigation.

The Commission requested that the word "party" in 4-8(c) be removed, and that "incorporated association" be replaced with "corporation". The Commission approved the proposed changes from Section 4-10 through the end.

Professor Garland noted that on page three, in the second paragraph, the language should read "the comments suggest" rather than "suggests".

The Commission discussed outstanding issues, and then a motion was made by Commissioner Buchsbaum to release the Report as a Final Report with the changes noted during the meeting. The motion was seconded by Commission Pfaltz, and approved unanimously by the Commission.

#### Title Recordation

Mr. Cannel explained to the Commission that Professor Garland had made a number of editorial changes to the Tentative Report that will be made in the next

draft.

Commissioner Buchsbaum observed that in Section C-1 the "Commission on Title Recordation" has to be removed.

Commissioner Pfaltz suggested that the "Prepared by" requirement on documents should also be removed. Commissioner Bertone noted that the requirement had previously been removed from all other documents, and that deeds are the only documents that still require it. The Commission decided to delete the requirement from Section R-2(a)(5).

The Commission decided that the requirement for marginal notations to reflect assignments, extensions and satisfactions of mortgages, previously removed, will be reinserted into the text. These notations are a convenience still used in some circumstances. It was noted that there are sometimes problems when a mortgage and an assignment are being recorded at the same time. Assignments are sometimes returned unrecorded when they are submitted with the mortgage. Professor Garland suggested that the language be changed to include "if a book and page have been assigned to the mortgage". The change to the language of R-2 should be picked up in the Comment to that Section.

Commissioner Buchsbaum stated that he was concerned with how Section R-4 will be implemented. Mr. Cannel responded that there is no uniformity at the present time. Commissioner Buchsbaum asked what would be done if there was a dispute about compliance. Mr. Cannel suggested that it is easier to simply refile a document including whatever the Clerk says needs to be included. The Commission determined that the language that had been removed would be replaced.

David Ewan, representing the New Jersey Land Title Association, said there is a preference that maps be submitted electronically. Commissioner Buchsbaum suggested that the Commission staff should call Robert Kirkpatrick to discuss the issue.

In Section R-5(b), Commissioner Buchsbaum requested that "as soon as possible and" be changed to "as soon as possible but no later than".

Professor Garland asked if there should be reasons for the rejection of a document submitted for recording. Mr. Ewan indicated that the preference was to have a form attached listing "each ground for rejection". The Commission

decided to insert this language in R-5(c).

The Commission decided to incorporate Professor Garland's suggestion in Section R-6. In Section R-7(b), the word, "also" will be added to "and shall be indexed". In R-7(e), the "s" on the end of the last word will be deleted. Section R-8 will be deleted. In Section R-9(b) the word "otherwise" will be changed to "in the absence of a request". Section R-10 was changed to allow only one extension of a notice of settlement and to make it clear that an individual may file a single notice of settlement for both a deed and a mortgage. Subsection R-10(h) will be eliminated and the statute will rely on R-10(g).

Mr. Cannel explained that the Land Title Association preferred alternative two for Section OE-1, and that it was a practical and no-nonsense way to approach the issue. The Commission approved alternative two.

In Section F-9(c) Commissioner Buchsbaum suggested that to avoid having the Clerk's office used as a check cashing service, a provision be added to limit to \$20 the excess over the amount due that may be submitted and refunded. Otherwise, someone may submit a check for \$1000 for recording a \$100 item, and the office would be forced to cash the check which might later bounce. The Commission approved this insertion and requested that the Comment be modified accordingly.

Section C-1 was deleted. For the next meeting, section OE-1(b) will be revised and a revised version of the document will be prepared. Commissioner Buchsbaum noted that M-4 must be checked to make sure it works with the Municipal Land Use Law.

#### Motor Vehicle Loss of License

The Commission will review the chart prepared at its request, but there is no anticipated action to be taken.

#### Miscellaneous

The next meeting is scheduled to be held on April 24, 2003.