

MINUTES OF COMMISSION MEETING
May 20, 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, Vito Gagliardi, Jr. and Peter Buchsbaum. Grace Bertone attended on behalf of Commissioner Rayman Solomon, 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 April 22, 2004 meeting of the Commission were modified as follows:

- In the last paragraph of the first page of the minutes, on line three, the phrase “maybe even allude to the first report” was removed;
- In the second paragraph on page two, on line five, the word “up” was removed;
- In the first partial paragraph on the third page, on the second line, “, who only took it out of the box and put it on shelves,” was removed; and
- Professor Garland clarified that his suggestions from the prior meeting regarding the enforcement of judgments had been improperly summarized and that it was his recommendation that the rule limiting execution against real property would apply only for judgments within the limits of the Special Civil Part.

Enforcement of Judgments

Professor Garland explained his clarification of the issue improperly reflected in the minutes of the last meeting and stated that his recommendation was that if the amount of the judgment in issue was within the jurisdictional limit of the Special Civil Part, then a collection order may issue only if the stated criteria are satisfied, in short, personal property must be exhausted before real property may be reached. If the judgment in issue is beyond the limit of the Special Civil Part, then the judgment creditor should not have to pursue personal property first.

Commissioner Gagliardi asked for clarification of the public policy that would be served by the draft of the provision limiting execution against real property, and John Cannel explained that the change went some way toward addressing concerns about an elderly person losing a home as a result of an inability to pay a comparatively small judgment. Professor Garland suggested that it also encouraged the hiding of personal property in an effort to protect it from judgment creditors since if personal property is hidden, the real property is not at risk. Commissioner Buchsbaum noted that Section C-3½ might be acceptable to Professor Garland if (b)(3) were removed because the section would then encourage debtors to come forward with real property. Professor Garland renewed his objection to any additional procedural burden being placed on a creditor who has already obtained a valid judgment. After considerable discussion, the Commission

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chose to eliminate (b)(1) and (b)(3) from Section C-3½ and leave (b)(2). Professor Bell noted his dissent.

Commissioner Buchsbaum suggested that in the comment to Section C-13, the word “generalize” is not specific enough and should be better explained. Professor Garland said that in Section C-13(e), language should be included to clarify that after 30 days, the hold is gone. He also asked how a co-owner could assert rights, questioning whether or not the language as it presently appears is effectively a prejudgment remedy as against a co-owner and asked whether it was necessary to clarify that an order of the Court is only effective up to the amount of the judgment. Chairman Burstein said that a co-owner may go in to Court for an order to show cause if necessary, and that a co-owner has this right without its being specifically articulated in this section of the statute.

Commissioner Bertone noted that with regard to a time limitation, a judgment creditor has no control over when a sheriff’s officer will levy. Commissioner Buchsbaum suggested that these issues are appropriate for resolution by a court based on the specific facts of a given case.

The Commission requested that this project be treated as a new project, and an Amended Final Report be released.

Title 39

The status of the project was briefly summarized for the Commission by Laura Tharney and no substantive discussion of the new provisions took place since the information submitted was tentative and represented only a portion of the project currently in progress.

Parentage Act

Chairman Burstein summarized for the Commission the meeting of Chairman Burstein, Commissioner Gagliardi, Commissioner Buchsbaum and John Cannel with Mr. Timothy Lydon, a Legislative Staff person assigned to the Judiciary Committee working with Senator Adler. Mr. Lydon is the individual assigned to deal with projects submitted to the Legislature by the Law Revision Commission. Chairman Burstein characterized the meeting as a productive conference. During the course of the meeting, Mr. Lydon explained the matter of the Parentage Act, and the fact that there were two opposing bills presently before the Legislature. Mr. Cannel offered to see if he could draft a piece to serve as a middle ground.

Mr. Cannel explained that after the meeting, he received a telephone call which required his drafting to be completed much more quickly than had previously been anticipated, so he completed a proposed draft and forwarded it to Mr. Lydon. It was

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circulated, but Mr. Lydon advised that it was not clear whether further Commission action was useful at the present time. No further action will be taken by Staff at this time, and, since the matter is a Staff project that the Commission has not yet considered, the Commission will take no action at this time. Commissioner Gagliardi did suggest that if further Staff action is to be taken, terminology such as "having given birth" should be replaced with biologically accurate terminology.

Further Contacts With the Legislature

Commissioner Buchsbaum asked if it would be an appropriate time to meet with Assemblywoman Greenstein since the Commission representatives had finally been able to meet with the Senate representative and the Commission agreed that such a meeting should be arranged. Commissioner Gagliardi suggested that every two or three months, Mr. Cannel should call to remind the Commission's Legislative contacts of the impending Commission meeting and to ask if there is any updated information that should be submitted to the Commission.

Mr. Cannel noted that Senator Baer submitted the Commission's Title Recordation project.

Commissioner Buchsbaum asked for a description of the flow of a project once it has been submitted to the Legislature by the Commission. Mr. Cannel indicated that the only time a piece was drafted was if there was a Legislative sponsor who submitted it to bill drafting. Commissioner Buchsbaum suggested it would be helpful to keep a record of when a Final Report prepared by the Commission is sent to Trenton, when it finds a sponsor, and when it is submitted to bill drafting.

Weights and Measures

The Commission agreed to carry this matter until the June meeting to accommodate members of the New Jersey Food Council who wished to be present and discuss the matter with the Commission but were unable to be here for this meeting.

U.C.C., Article 2

John Burke indicated that one of the major points in the proposed Uniform Article 2 of the Uniform Commercial Code is the scope of the Article. With the failure of UCITA, there remained a question of whether "goods" will include "information" and, as a result, Article 2 would govern software and computer information. NCCUSL decided that it would not.

In response to questions from the Chairman, Mr. Burke indicated that the NCCUSL report has been finalized but has not been widely adopted. No states have adopted Articles 2 or 2A, some states have adopted Articles 3 and 4, and a state or two

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has adopted Article 7. Mr. Burke suggested that if the Commission is going to work on any of the Articles, it should work on all of them at the same time and send them to Trenton as one bill. The changes to the Articles in question deal with electronic agreements, the statute of frauds, the parole evidence rule and warrantees.

Mr. Cannel noted that to remove software from Articles 2 and 2A is controversial since to remove it from there leaves it governed by part of the Commercial Code or other uniform law. Mr. Burke explained that most courts end up using Articles 2/2A by analogy anyway. The courts have determined that you can have a contract with electronic records, and they have defined “conspicuous” and explained what it means in the context of a consumer transaction.

Chairman Burstein suggested that in light of the Commission’s statutory obligation to review information promulgated by NCCUSL, the Commission do so, and the Commission agreed that Chairman Burstein would see if Uniform Law Commissioner Barry Evenchik had any thoughts regarding the utility of the Commission moving forward with this project at this time. In the interim, Staff was directed to proceed with the project.

Miscellaneous

The next meeting of the Commission is scheduled for June 24th. The July meeting is scheduled for July 15th, and the fall meetings will be reviewed to see if changes need to be made to accommodate the schedules of the Commissioners.