

MINUTES OF COMMISSION MEETING

January 20, 2005

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 A. Gagliardi, Jr., and Sylvia Pressler. 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 of McElroy, Deutsch & Mulvaney, attended on behalf of Commissioner Rayman Solomon.

Also attending were Gerard J. Felt, Esq. and Arthur J. Raimon, Esq. of Pressler and Pressler, representing the New Jersey Creditors Bar.

Minutes

In question 3) of the Peer Review section, the third word, "would," should be removed. Subject to this correction, the minutes were accepted as submitted.

Medical Peer Review

Commissioner Pressler said that a statute protecting peer review materials would affect the balancing process courts now employ case by case.

Commissioner Gagliardi listed three categories of information to consider: 1) facts which a peer review committee considers, 2) non-recorded facts and opinions elicited at the meeting, and 3) analyses and conclusions reached by the committee. It is currently possible to obtain the information in the second category.

Chairman Burstein said he does not believe in expanding privileges; codifying the present practice would not add any benefit to what the court can do *ad hoc*. Commissioner Pressler agreed that codification could be counter-productive and could limit the development of case law.

The Commission agreed to issue a Tentative Report stating that it does not recommend codification of current practice.

Enforcement of Judgments

John Cannel said that Professor Bell had suggested an index that could be used to adjust the homestead exemption over time for inflation in residential housing prices.. Mr. Cannel noted that the numbers in the draft are placeholders. Commissioner Pressler asked how the upset price for a residence at a public sale is fixed. Mr. Cannel replied that currently at a sheriff's sale, the property is sold subject to existing mortgages. Commissioner Pressler suggested fixing the value of the property in relation to the income of the debtor. The Commission agreed that a reason exists to treat a primary

residence in a special manner. Professor Garland raised the issue of defining residence, and asked whether a declaration of residency should be filed. Commissioner Gagliardi said that residency is extremely fact sensitive. Professor Bell said that a person should not get an exemption on a house is over a certain amount

Gerard J. Felt, Esq., representing the New Jersey Creditors Bar, said that the Commission seems mainly concerned with debtors' rights and due process. Before judgment is entered, the debtor is protected. In Special Civil Part, for debts not exceeding \$10,000 the debtor gets special forms. Professor Garland asked whether a creditor has a judgment lien on the property. Mr. Felt said, yes, if the creditor docket the judgment. Mr. Felt said the Commission needs to be concerned with creditors' rights. The draft limits judgment creditors' rights by preventing the lien from being perfected under bankruptcy law if it is for only \$9,999. Creditors should be able to prosecute their judgments even if they need permission from a judge to sell a residence. Arthur J. Raimon, Esq., also representing the New Jersey Creditors Bar, said that he has seen only twice a sale of residential real estate to satisfy an unpaid judgment.

Professor Bell explained his opposition to treating real estate the same as personalty. Debts arising from medical issues and during substantial periods of unemployment should not result in loss of a primary residence.

Mr. Raimon said that even though a creditor has the right to a judgment lien on real estate and to make a levy, rarely do these occur, because a mortgage on the property has a "due on conveyance" clause. Selling real estate is for the benefit of the bank holding the mortgage. The reality is that peoples' homes are not sold. The creditor looks for two other things: 1) bank account and 2) place of employment. If a statute exempts real estate, New Jersey will become like Florida or Texas. The purpose of the "execution statute" is to collect the judgment, not to protect the debtor who is already amply notified. The business community will not be happy with a change.

Professor Garland suggested a more limited dollar value exemption for homestead than Florida or Texas affords. Mr. Raimon said it would be helpful to get counsel from the Bankruptcy Bar. Under the current statute, everyone takes the federal or state exemptions; beware making the amount higher than the federal amount. Mr. Cannel suggested a priority provision stating that the residence cannot be reached until other property has been exhausted.

Commissioner Pressler warned against drawing a distinction between personalty and non-residential real property. She asked why garnishment is included; it never had had to be exhausted.

Commissioner Pressler suggested, instead of a homestead exemption, a hardship stay in attempts on execution of a residence, or having a chancery court judge order

equitable relief. Mr. Raimon said that an analogous situation exists in landlord-tenant practice.

Professor Garland listed factors to consider: 1) amount of equity, 2) refinancing ability, and 3) unemployment (temporary). Commissioner Pressler said not to limit the stay to six months.

Mr. Cannel said that the next draft will embody this new approach.

Title 39 – Motor Vehicles

There are a number of different types of license plates currently available in New Jersey. “Personalized plates” are those with the standard license plate design, but with characters selected by an applicant. There are, however, license plates available with different designs, regardless of whether or not they have characters selected by the applicant. The various plate designs can be divided into five different categories: vehicle-type plates (historic, street rod, commuter van, farm vehicle); occupation-type plates (ham radio operators, fire department member, rescue squad member, EMT, some county and local government members, and current and former members of the State Assembly or Senate); military-type plates (national guard, disabled veteran, PWO, military reserve, recipient of certain military awards (Purple Heart, Silver Star, Navy Cross); non-profit organization plates; and specialty funding plates (coastal protection, animal population control, Garden State Games, Battleship New Jersey, historic preservation, etc.) All of these different plate types are authorized by the MVC, designed with the approval of the MVC, and applied for through the MVC. All new plate types, and any requirements for those plate types, are established by the Legislature.

As a first attempt to organize this area of the statute, the many available plates were combined into the categories described above. In the current statute, the plates are not organized by category. Preliminarily organizing the license plates highlighted some areas in which further consolidation is possible. It also highlighted areas of inconsistency where it might be appropriate to revise the current statutory provisions so that all of the plates of a particular type are treated similarly.

The Commission requested a list of the amount paid for each of the various available plates. The list will be provided for the next meeting.

Recompilation

Mr. Cannel reported that the first, rough draft is almost done.

John Burke said that the definitions have problems; Commissioner Pressler concurred, referring to the definition of “entity.” Chairman Burstein suggested that the definition should be redone.

Weights and Measures

Mr. Cannel had a meeting with a group of weights and measures officers. A number of them will attend the February meeting. Mr. Cannel will give a list of the points they raised to the Commissioners prior to the meeting.

Miscellaneous

Chairman Burstein said that the annual report will be on February's agenda.

Meeting Dates

Generally, meetings are scheduled for the third Thursday each month. However, the next meeting will take place on Wednesday, February 16, 2005. (Filing will be Friday, February 4th.)