

MINUTES OF COMMISSION MEETING
September 21, 2006

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Commissioners Vito Gagliardi, Jr., Albert Burstein, Andrew O. Bunn, and Sylvia Pressler. 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.

Also present were Eileen Costello, Office of Legal and Regulatory Affairs, Liaison, Division of Family Development, Department of Human Services; Fred Allen, New Jersey County Welfare Attorneys and Counsel, Somerset County Board of Social Services; and Frieda Phillips, Office of Legislative Affairs, New Jersey Department of Human Services.

Minutes

The Minutes of the July 20, 2006, meeting were unanimously approved as submitted.

Open Public Records Act

Chairman Gagliardi said that in light of the modest change recommended to this section of the statute, he proposed forwarding the report to the Legislature.

Professor Garland suggested that in the introductory paragraph, the word “fell” should be removed, that the second paragraph should say, in the first line “required to be...”, and that in Section 1(a) (10), subsections (a), (b) and (c) should be inserted.

Professor Garland suggested that in Section 1(a)(10) the second exception, “or party in interest” could refer to someone unrelated to the information sought. Chairman Gagliardi indicated that the language in question was existing statutory language. Commissioner Bunn added that there was only a single change being made by this revision, the change from a single word to several words. Chairman Gagliardi observed that no additional revision was being contemplated at this time since the Act in question had been revised in 2001 and that the Commission would not generally revise a statutory section that had been revised so recently.

John Cannel said that the project could be released as a tentative report in order to obtain public comments, or it could be released as a final report. Commissioner Burstein suggested that the report was narrow enough that it could be released as a final report immediately. Commissioner Bunn moved to release the report as a final report with the changes discussed. The Commission unanimously voted to do so.

Poor Law

Fred Allen reported that the County Welfare Attorneys had preliminarily discussed this project at their last meeting. He raised several points that were of concern to those attorneys.

Initially, Mr. Allen noted that the current language of 44:7-20 affords the Director of each of the County Welfare Boards subpoena power, which they use extensively in investigation and the legal departments. This power is absent from the current draft and if it is not restored, it will significantly impair the ability of the County Boards to determine eligibility, among other things. Mr. Allen also expressed concern about the fact that the current language of 44:4-20 and 44:7-7 establishes the County Welfare Boards as corporate entities, able to sue and be sued in their own names, for example. The current draft does not delineate the powers as the current statute does, and Mr. Allen suggested that the failure to do so would pose problems. Similarly, the current draft does not include language like that found in the statute electing a chairman, vice-chairman, secretary and treasurer of the board, nor does it contain language requiring monthly meetings or establishing the required composition of the boards. Mr. Allen said that the draft should contain language addressing these issues. In addition, he suggested that there should be language indicating that the Director should be a member of the competitive civil service and should not be a member of the Board. In Mr. Allen's opinion the failure to include language pertaining to the qualifications of various individuals, is an error. Mr. Allen also cited Sections 44:7-6.1, 44:4-23, 44:7-9, 44:4-33 and 44:7-11.

Professor Bell observed that some of the language that is omitted from the current draft might increase the discretion of the counties to handle matters in a way that the individual counties believed would work best for their situations. Mr. Allen replied that he believed that many of the requirements presently contained in the statute were important and should not be removed, including those he mentioned initially. He mentioned the importance of requiring that employees be members of the competitive civil service, and that employees be able to certify the affidavits of others as important matters that should be added to the draft.

Frieda Phillips reviewed the letter, dated September 20, 2006, which had been submitted by Acting Commissioner Clarke Bruno. Ms. Phillips suggested that there was considerable compromise among the various stakeholders when the Work First New Jersey legislation initially went through the Legislature. She suggested that it would be best not to substantially revise the legislative intent and findings as they appear in the current statute. Ms. Phillips also noted that it was important to consider that the programs discussed in the statute are not simply State programs, but that they have a federal component since the State receives federal funding. Food stamps, SSI, Medicaid, and emergency assistance might all be affected by any changes made to the current statute and those programs have federal fiscal and regulatory requirements that the Commission should be aware of. Ms. Phillips mentioned that the federal legislation reauthorizing TANF received more than 500 comments during the federal public

comment period.

Commissioner Bunn asked if the Legislation in this area was effectively a moving target every legislative cycle because of the significant interplay between the federal and state statutory and regulatory provisions. Eileen Costello said that it was always a bit of a moving target, but this year more so than others because of the substantial overhaul of the federal regulations. Commissioner Bunn noted then, that there was really no “perfect time” for a revision because the federal and state provisions are never static. Ms. Costello noted that since 1996 the law in this area has been relatively stable. Professor Bell asked if the federal changes were statutory or regulatory. Ms. Costello said both were being changed and that the current state statute was in conformance with the federal law. It was noted that while some aspects of the current statute might be in conformance with the federal scheme simply as a result of federal preemption, there is a State plan in place for compliance and New Jersey officials work closely with their federal counterparts to insure compliance.

Mr. Cannel explained that the Commission’s desire was not to change any of the substance of the statute. Commissioner Bunn confirmed that it was the substance of the statute, not its “architecture” that was important for federal compliance, and Ms. Costello agreed.

Chairman Gagliardi asked Mr. Allen to give the reasons that draft omissions of any current provisions would be unwise. Mr. Allen said that he would send his comments in writing to the Commission. Ms. Phillips said that the Department of Human Services will work with the Commission Staff, providing additional information and expertise as needed. Staff will set up meetings as appropriate. Chairman Gagliardi asked that staff provide a red-lined version of the draft as requested by Mr. Bruno.

Common Interest Ownership Act

There were no Commission comments on Section 1. With regard to Section 2, it was asked why the action to remove the unit owner was set in the Law Division. Commissioner Pressler said that was because it was an action in ejectment, although she noted that she thought it inappropriate to include language in the statute instructing where to bring the action. Commissioner Pressler said that the language should indicate that the action should be brought in Superior Court, and any additional detail should be left for the Court Rules. In response to the question of whether it was to be a plenary or summary action, Commissioner Pressler suggested that the draft language read “action for possession of land brought in Superior Court.” In response to a question as to whether such language would be applicable to condominiums as well as co-operative buildings, it was noted that UCIOA treated condos and co-ops the same way, and Commissioner Pressler recommended calling the action an action in ejectment.

Commissioner Burstein said that Section (a)(1) is substantially different from the other subsections pertaining to the removal of a unit owner. Commissioner Pressler said that she was concerned about the open-endedness of that subsection, asking when the

failure to pay fees and assessments became actionable. Mr. Cannel said that perhaps the statute should not include language saying that a unit owner can be removed for failure to pay. Commissioner Pressler noted that if the Board obtains a judgment for failure to pay rent, it can pursue an action for ejectment after the judgment remains unpaid for 20 days. Commissioner Bunn suggested that the statute should provide for notice and an opportunity to cure. The determination was made to require a valid judgment entered by a court of competent jurisdiction, notice, and an opportunity to cure. With regard to that same subsection, Professor Garland said that the language should be clarified to indicate that the funds due and unpaid do not have to be due under the master deed and bylaws, but under the master deed *or* bylaws. In response to the question of whether a co-op resident is really a unit owner, it was determined that the language of the draft would be modified to define “unit owner” to include co-op ‘owners’.

Commissioner Bunn suggested the addition of language in the second section of the draft clarifying that the section should not be deemed to authorize ejectment that is not authorized by the organization’s agreement or bylaws, so that it is not taken to confer such an option on entities that have not included such language in their master deed or bylaws. Commissioner Pressler suggested “one of the following is good cause as long as the master deed or bylaws provides for ejectment.” She also suggested that the language should refer to the “occupant of the unit” since if the unit owner is leasing, the unit owner is not in possession of the unit. Mr. Cannel said that the statute had to deal with three classes of occupants: owner-occupants, owner-lessees, and household members. He also suggested that if a unit owner brings an action to eject a problem tenant, the owner should no longer be subject to detrimental consequences since he has taken all reasonable steps available to him. Commissioner Pressler said that the draft language does not make it clear that the “removal” being discussed is the association’s. She also raised the point that the Anti-Eviction Act only applies to residences with three units or more under common ownership, so it would not apply to individual units. Commissioner Burstein said that the provisions of the draft should be compared to the provisions of the Anti-Eviction Act.

The Commission discussed the remedies available to various parties, and Commissioner Bunn noted that the draft provisions deal only with removal of an occupant, and are not the only option available to an association or a non-resident owner.

There was considerable discussion regarding subsection (a)(6), the detailed treatment of drug crimes in the Anti-Eviction Act, the inclusion of conduct which threatens health and safety, the inclusion of conduct which is a danger or poses an imminent risk of danger to health and safety, and the possibility of leaving out the crime language entirely, and specifying in the Comment that this was done because it was not possible to cover every category of offense, and any language included would ultimately be too narrow. The Commission decided that the language regarding crimes would appear only in the Comments section. In addition, in subsection (b), the word “shall” will appear in the first line of the section, and will be removed from individual subsections (1), (2) and (3). Also, the term “occupants” will be included in addition to “unit owners” where appropriate.

With regard to Section 3, the Commission decided that the language of (a) was to be modified to read that the master deed or bylaws “may not regulate behavior in or occupancy of units unless the behavior significantly adversely affects the use and enjoyment....” The language of (b)(1) will be eliminated from the draft.

The Commission instructed Staff to redraft the provisions in accordance with the discussion at the meeting.

Miscellaneous

The next meeting is scheduled for October 19, 2006.