

MINUTES OF COMMISSION MEETING
July 19, 2007

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey, were Chairman Vito A. Gagliardi, Jr. and Commissioner Albert Burstein. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Also attending were Edward Eastman and Lawrence J. Fineberg of the New Jersey Land Title Association.

Minutes

Chairman Gagliardi requested that the Minutes of the June 21, 2007 meeting be modified to reflect a subject heading of "Poor Law / Public Assistance Law" rather than just "Poor Law" and to include the words "officials from" before the word "the" at the end of the first line of that section. In addition, in the "Miscellaneous" section, Chairman Gagliardi asked that it be noted that members of the Commission roundly praised Ms. Ungar and wished her well in retirement. The minutes were accepted without objection with those changes.

Adverse Possession

Chairman Gagliardi indicated that the Commission had received a letter from Lawrence Fineberg regarding tidewaters and thanked the guests for their contributions.

Mr. Fineberg indicated that he did submit a letter to Mr. Cannel in the form of a validating act pursuant to Judge Pressler's suggestion. He also indicated that Mr. Cannel had incorporated the wording, which captures the spirit of his language, in the draft statute, and that he has no objection to the format proposed by Mr. Cannel.

Mr. Cannel indicated that Commissioner Burstein had sent a note regarding recent decisions that brought to mind an error that he had made in drafting the proposed language. In its current form, the draft does not address the fact that the *Bogoda* decision is prospective only. The language will have to be modified and Mr. Cannel will do so before the next meeting.

Professor Garland indicated that he has seen language pertaining to tidelands that describes them as "now or formerly flowed by the tide". He asked the guests if they had deliberately chosen to use the different language "affected by the ebb and flow of the tide". Mr. Fineberg said that he thought that the latter was clearer because if the land was ever flowed by the tide, it is covered by the Act. Mr. Cannel asked if that language should be included in the statute. Mr. Fineberg responded that the proposed statute used

language referencing the State's claim, and that it was an issue of referencing the same thing with different language.

Mr. Cannel advised the Commission that he had a discussion with the Attorney General's office prior to the meeting and the representative that he spoke with indicated that they would have a submission for the Commission's September meeting. He said that it would make sense to review their submission and the response of the Title Association before making further modifications to the draft.

Chairman Gagliardi recommended that the entire project be held until the September meeting to allow an opportunity for a review of any comments submitted by the Attorney General as well as the presence of the Commissioners with land use experience.

Poor Law

Judith Ungar reported that Mr. Cannel and she were in Mercerville on July 18th to meet with the Department of Family Development, and that another meeting was scheduled for September, after which the project could be completed.

Mrs. Ungar explained that it was a very fruitful meeting, and that there are a number of changes to be made to the draft, pursuant to suggestions received at the meeting, all of which will be made prior to the September meeting. She indicated that the changes to be made did not represent problems with the draft, but rather represented items that the Mercerville group identified that had escaped the notice of Commission staff.

Mrs. Ungar said that the Department of Family Development did not want to change the name of the statute from "Poor Law". Philosophically, they want it understood that the State has, forever, an obligation to take care of the poor. She indicated that the Mercerville group felt that all of the changes were achievable, but there was one change to the statute that they did not feel was something they could accept. Mr. Cannel explained that one sentence of the statute puts a residual duty on the municipality to provide for the poor if various current programs cease to exist. Many municipalities have transferred responsibility for these functions to the county and are, effectively, out of the support business. They believe that once they transfer responsibility, any residual responsibility should rest with the county. The proposed language is no change from current law.

Professor Garland asked if it could just be explained that the draft does not change any transfer of responsibility. Chairman Gagliardi asked what the budgetary issue is. Mr. Cannel explained that if, hypothetically, all other entities cancelled their assistance to the poor, the municipalities have a duty, a common law duty, to provide for the poor. The difficulty with transferring such a responsibility to the State is that the State, by passing an appropriations bill lacking an appropriation for assistance to the poor, could eliminate such assistance.

Professor Garland asked if, by enacting a comprehensive law you supercede the common law. Mrs. Ungar said that the draft statute specifically said that it does not. She added that the sentence pertaining to the ultimate municipal responsibility is the most problematic sentence in the draft. Mr. Cannel explained that everyone agrees that there should be a residual duty; the question is whom it should fall on.

Chairman Gagliardi said that he did not know that he had, thus far, heard an argument for removing the questionable provision. He added that the Commission might hear such an argument, and remove the provision, before the report is released, but is not inclined to do so at this time. He indicated that he hoped that by the next time the Commission sees this project, whether in September or October, it is a clean copy that has been approved by the Mercerville group. He also asked that the attorney for the League of Municipalities be invited to the meeting at which the Commission will next see the project.

Title 22A – Fees

Ms. Tharney indicated to the Commission that there were several entities that she would like to hear from regarding this project, including the Administrative Office of the Courts, the New Jersey Surrogates, the Superior Court Clerk's Office, the Civil Division Managers and the County Clerks. She has received some preliminary comments from the Administrative Office of the Courts, and the Superior Court Clerk's Office. Those two entities are working together to prepare comprehensive comments and provide them to Staff. In addition, Ms. Tharney has had preliminary discussions with individual Civil Division Managers in order to obtain some basic comments, and to identify the materials they refer to when a question arises regarding a particular fee. She has made some telephone calls and has obtained enough preliminary information to sort out the statutory language pertaining to the County Clerks from the language pertaining to the Supreme Court Deputy Clerks in the statutory section where they overlap, but more information will undoubtedly be needed. The County Clerks do not have a monthly meeting again until September, but, after that time, it may be possible to provide them with some information to review.

Recommendations that have been received to this time include recommendation of: (1) wholesale change to the statute, restructuring and streamlining the fee provisions to make them more relevant and user friendly; (2) inclusion of a definitions section to clarify alternative uses and the modern versus historical uses, etc.; (3) restructuring of the statute to create a flow from pre- through post-judgment to aid litigants and court personnel; (4) changes to the "first paper" rule; (5) separation of the County Clerk fees from the Superior Court Clerk fees; (6) creation of three sections of the statute - general civil, family part, and probate part; (7) re-insertion of witness fees which were removed in the preliminary draft, these are said to be necessary, but at a set rate since computation of mileage is too complex given questions about the rate, the distance eligible for compensation, etc. so a flat rate of \$35 for an in-county witness and \$40 for an out-of-county witness was proposed; and (8) elimination of mileage computations whenever

possible in light of the calculation problems, the fact that the rate changes very frequently, and the fact that the State does not use the federal mileage rate.

In addition, information was provided to Staff that: 1) New Jersey's audit fees are some of the highest in the nation, 2) the 22A section regarding the use of some of the money collected as a result of the institution of divorce actions was pre-empted by the 1996 Appropriations Act, 3) the possibility of a fund for mediation drawn from any increase in initial filing fees resulting from an effort to rationalize the fees for filing the first paper in any action, and 4) the \$0.75 fee for duplication referenced in the Open Public Records Act might be a useful fee to adopt for the sake of consistency.

The Commission pointed out that the current draft did not reflect the change in Section 22A:1-1.1(b) raising the payment to jurors to \$35 after two days of consecutive attendance rather than three. Ms. Tharney acknowledged the error and indicated it would be corrected in the next draft. The Commission also asked that Staff determine why 22A:2-14 applies only to the appointment of a guardian ad litem after a default in Chancery Division.

Title 39

Ms. Tharney briefly discussed the newspaper article regarding graduated driver's licenses and the question about their effectiveness in light of what appears to be an increase in the deaths of teen drivers during the time that the law has been in effect. Chairman Gagliardi asked if the police officers that she has spoken with had provided any suggestions for modifying this section of the statute. She indicated that one of the suggestions that she has received was the imposition of a license suspension or a community service requirement for violations of the license restrictions. Ms. Tharney explained that officers had expressed to her a concern that the fine imposed for a violation of the statute was simply paid by a parent of the teen driver and that, as a result, the current statute provided no real and immediate consequences for the teen driver who violated the law. Professor Bell asked how effective it would be to suspend the license of the teen driver. Chairman Gagliardi indicated that since officers seem to be suggesting that fines are the least effective penalty for this offense, and asked that Ms. Tharney provide a specific suggestion from the police officers regarding community service or suspension of the license in time for the September meeting.

The Commission determined that, in response to the comments received, the following changes would be made to the classification of certain items:

Class C

3-4 and 3-4b

obtain feedback to enable the Commission to determine if the statutory language should include the words "material" and "knowing" - check the form to see if it says "knowing"

3-33	leave in C
3-29	separate out the omnibus language and leave in C
3-84.3	for failure to stop and submit vehicle to measurement or weighing, move to Class F
3B-22	move to Class D
4-129	first offense - leave in C; subsequent - move to Class D
4-132	move to Class D
4-66.2	move to Class B
4-97.2	discuss with officers and MVC the possibility of removing the surcharge
4-97.3	leave in C
4-96	first offense - move to Class D; subsequent - move to class E
4-104	move to Class B
5B-24	if authorized to carry - move to Class D; if no authorization - move to Class E (but check federal statute first)

Class D

3-75.3	obtain more information about offense and parties on whom penalties imposed
4-129	check and see if this was addressed earlier

Class E

No changes other than those set forth above.

Class F

No changes other than those set forth above.

Miscellaneous

The next meeting is scheduled for September 20, 2007.