

MINUTES OF COMMISSION MEETING

March 20, 2008

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., Commissioner Albert Burstein, Commissioner Andrew O. Bunn, and Commissioner Sylvia Pressler. Professor William Garland of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Minutes

The Minutes of the February 21, 2008, Commission were unanimously accepted as submitted with the following changes: (1) Commissioner Burstein was inadvertently omitted from the first paragraph noting those present at the February meeting; and (2) the last sentence above the reference to Title 39 on page 5 was corrected to state that Staff would consult with the Probate Section “of the State Bar”.

Title 39

Ms. Tharney explained the distribution of the Title 39 project. She recited the list of agencies and entities to whom the project has been distributed thus far and asked the Commission to let her know of any individual or group that was not included in the list that the Commission believed should receive information about the availability of the project. She also advised the Commission of the list of meetings recently attended, and the list of new meetings to which she has been invited in the coming weeks.

Ms. Tharney also said that, as of the time of the meeting, she has received one request to change the deadline for receiving comments on the report. Staff was instructed that the Commission was, at this time, reluctant to change the date if the majority of the responders had indicated that they would be able to provide comments by May 15th, but would consider the issue further if necessary. Commissioner Bunn asked if Governor’s Counsel had been provided with the information regarding the project and, since that information has not yet been provided, Ms. Tharney will forward it.

Title 22A

The Commission will wait to consider this project at the next meeting after comments are received by Ms. Tharney.

Uniform Trade Secrets Act

Marna Brown indicated that Staff had been advised the Uniform Trade Secrets Act (UTSA) was a priority for NCCUSL this year. 47 jurisdictions have already enacted it but New Jersey has not, although the UTSA has been introduced in the State Assembly several times without success. Ms. Brown explained that although the UTSA appears to

be a project that will enhance our common law, some limited changes may make it more suitable for use in New Jersey. John Cannel indicated that Maureen Garde, a former Staff Attorney with the Commission who has experience in this area of the law indicated the UTSA was “business friendly” and because it is easy to forum shop in this kind of case, uniformity of law was important. She recommended adopting the UTSA.

Commissioner Bunn suggested that there are some areas of vagueness in the law and that the issue of whether it is “business friendly” depends very much on whether one is a plaintiff or a defendant. He noted the issues pertaining to the collectability of costs and fees, among other things. Commissioner Pressler was curious about why the legislature has not yet moved forward with passage of the uniform law.

Chairman Gagliardi said it was not clear from reading the UTSA who might oppose it and Mr. Cannel reiterated that Staff had found nothing in the way of opposition to the law. Commissioner Bunn remarked that the common law in this area is pretty well developed. He said that it was much easier to state a cause of action under the UTSA than common law because under the UTSA there are only three elements of the cause of action, while New Jersey common law requires a demonstration of more elements. Significantly, under common law, the defendant has to have used the secret to benefit a competitor, while under the UTSA; the defendant simply had to use the secret with no required proof of benefit. Commissioner Bunn suggested that New Jersey has a better developed body of law than the UTSA would provide.

The Commission directed the Staff to go forward and obtain more feedback on the project, although Commissioner Pressler cautioned that, if this project moves forward, the Commission must take care not to lose the benefits of New Jersey’s existing common law.

Uniform Principal and Interest Act

John Cannel explained he was asked to review proposed changes to New Jersey’s current UPIA. The request was made by the State Bar Association in an effort to update and modernize the Act. Having reviewed the proposals, Mr. Cannel explained that they were minor amendments to the Act. Mr. Cannel noted that he was unsure of the Commission’s role in this matter and whether acting in an advisory capacity was an appropriate role for the Commission in light of its statutory mandate.

Commissioner Burstein suggested, and the Commission agreed, that additional information was required from the State Bar to determine what they are seeking to accomplish, and how they perceive the role of the Commission, before proceeding further.

Title 9

Mr. Cannel explained that the Assembly Judiciary Committee had raised Title 9 as an area of the law that was in need of clarification and consistency. Some of the Title

is anachronistic and should be eliminated. The parentage information is a problem but, in the absence of real consensus, it will be difficult to revise it appropriately. Mr. Cannel's suggested that the adoptions section should be left alone because the law is relatively recent.

A very significant problem is that the definition of child abuse is confusing because there is no real agreement on the issue. As a start, the definition should not be the same for civil and criminal purposes. Another area that is a substantial problem is the portion of the law dealing with consents and contracts by minors. Mr. Cannel noted that the Title contains the provisions regarding parental consent to abortion which have been determined to be unconstitutional.

Commissioner Gagliardi commented that this project may be a very ambitious task, but it is a worthwhile one and should be pursued. Commissioner Pressler agreed that the project is enormously useful. Commissioner Bunn noted that since Mr. Cannel described the project as involving separate parts, perhaps it was best to revise one part at a time. The Commission directed Staff to begin with the child abuse and neglect portion first because that is a very difficult and very important piece.

Uniform Trust Code

Discussion of this project was held for another meeting.

Miscellaneous

The Annual Report will be on the April agenda.

Staff proposed Landlord Tenant law as a large, inconsistent and very complicated area of the law that Staff would like to address. The Commission determined that, because there are a number of projects on the current agenda that are large in scope, this project would not be undertaken at this time.

A motion to adjourn was made by Commissioner Pressler and seconded by Commissioner Bunn.

The next meeting of the Commission is scheduled for Thursday, April 17, 2008.