

MINUTES OF COMMISSION MEETING
May 15, 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, and Commissioner Andrew O. Bunn. Grace Bertone, Esq. of McElroy, Deutsch, Mulvaney & Carpenter, L.L.C., attended on behalf of Commissioner Rayman Solomon.

Also in attendance were Wendy C. Romano of the Christian Science Committee on Publication for New Jersey, John Malaska, Esq. from the New Jersey Department of Children and Families, and Liza M. Kirschenbaum, Esq., Associate Director of the Court Appointed Special Advocates for Children.

Minutes

The Minutes of the April 17, 2008 Commission meeting were accepted as submitted after a motion by Commissioner Burstein which was seconded by Commissioner Bunn.

Title 9

John Cannel explained that after the Commission took a first look at this project, the initial draft of the definitions section was revised to incorporate the Commission's preliminary comments in a form closer to the form of the current statute, which is relied upon by the Department of Children and Families. Mr. Cannel indicated that when he presents the Commission with the entire chapter, that will provide additional context for the definitions. He explained, however, that he thought it advisable for the Commission to review the definitions once more before moving forward. Chairman Gagliardi explained to the guests that the Commission's position is that is that the definitions can be improved and the Commission would like to improve them. He added the Commission wants and welcomes input from those with experience in this area.

Mr. Malaska said that he was present at the meeting only as an observer, as did Ms. Romano. Liza Kirschenbaum said that she was very pleased that the definition currently included in the draft was less broad than the definition in the earlier draft. She expressed her concern that the broadened definition that appeared in the April draft would create more litigation and thereby put children at greater risk of harm. She also inquired regarding the impetus for any change in the definition. Mr. Cannel explained that the initial goal was to separate out the criminal definition from the civil one. A second issue had also been raised, however, that the current definition was so imprecise that it did not give sufficient guidance to the agency and as a result, interpretation of the statute rested solely with the Courts.

Ms. Kirschenbaum raised an additional concern that incidents of child-on-child sexual abuse often go uninvestigated because they do not fall within the technical definition of abuse. She explained that it is important to investigate these cases because in general, children do not initiate these acts on their own and that it has been suggested that the acts of the child aggressor might be the result of the abuse of that child by an adult. Ms. Kirschenbaum also pointed out that in the current statute, in 8.9(d), there is language concerning improper supervision and she did not see that language in the draft. Mr. Cannel indicated that the closest the draft comes to

such language is found in 8.9(b) which discusses the “negligent failure to give proper supervision”. Ms. Kirschenbaum said that the two issues are linked and observed that the failure to provide food, clothing and shelter is included in the draft while the failure to provide adequate supervision is not and should be. She also noted that, in the current draft, there are differences between sections 8.9 and 8.21 and the language in those sections should really be the same. Mr. Cannel explained that those two sections will eventually be superseded by one consolidated section. Ms. Kirschenbaum said that this revision was an improvement over the April draft.

Chairman Gagliardi asked Ms. Kirschenbaum if there was someone on her staff who would be available to review and comment on the draft as it progresses and Ms. Kirschenbaum said that she would be happy to do so and that drafts of the project could be emailed to her for that purpose.

Poor Law

Mr. Cannel indicated that he was pleased to be able to say that with the exception of certain technical, non-substantive, changes recently brought to his attention via email, this project was completed. The Commission agreed to release the project as a tentative report on motion by Commissioner Burstein seconded by Commissioner Bunn.

Pejorative Terms

Chairman Gagliardi questioned the inclusion, on the first page of this project, of other pejorative terms not found in the statute. Marna Brown explained that since the Commission had requested that Staff search all possible pejorative terms, Staff searched all of the possibilities that Staff members could think of. Commissioner Bunn suggested that the explanation should be included in the report.

Ms. Brown explained that in addition to searching for related pejorative terms, Staff attempted to ‘clean up’ the statute as earlier directed by the Commission, including bringing the language current, substituting references to “18 or 21” with “reaching the age of majority”, and updating or eliminating the names of agencies that no longer exist.

Chairman Gagliardi asked if reaching out to organizations like ARC would help assure that some of the efforts Staff has made to replace terms would not inadvertently change statutory meaning. One of the issues that the Commission had discussed was the fact that terms like “imbecile” and “idiot”, while currently deemed pejorative, had precise definitions. This requires caution to insure that, by replacing these terms, the Commission did not inadvertently make substantive changes and interfere with, for example, the receipt of government benefits. Ms. Brown said she would contact the person at the Governor’s Council for the Prevention of Mental Retardation, with whom she had already been corresponding, regarding review of the provisions.

Commissioner Burstein questioned the need for 2A:15-1 and Mr. Cannel explained that he did not know why it was there other than it has always been there. Commissioner Burstein pointed out that it was enacted in 1903 and Mr. Cannel said that it may have antecedents even older than that. Commissioner Bunn suggested that the comments to this project should reflect the fact that the Commission was restrained and did not diverge from its initial goal of accommodating the constitutional change but that the Commission had identified other problematic areas requiring revision once this project is completed.

Commissioner Burstein also pointed out that on p. 9 of the draft, in 17:4-9.1, the term pertaining to successor companies appeared in a section of the statute that had been repealed and the term is not included in the new section. Commissioner Bunn mentioned that because this area of the law may be controlled by a uniform act, the language that was being examined may be obsolete.

Mr. Cannel expressed concerns about the degree to which the various independent boards mentioned in various sections of the statute still exist, and their current functions. He explained that it is possible that, as a result of an executive order, an institution continues to physically exist but with a new management structure or no management.

Mr. Cannel explained that Staff would consult, where appropriate, with knowledgeable individuals in probate, banking and other areas, prepare the final draft of this project and present it as a potential tentative report for the next meeting.

Uniform Trust Code

John Burke explained that a New Jersey ad hoc committee of eight attorneys with considerable experience in the area of trust and probate law has been working on this project for several years. Mr. Burke attended their last meeting and indicated that the draft provided to him was intended to be their final draft. In general, Mr. Burke explained that some changes made by the committee to the proposed uniform law are technical in nature and others reflect the fact that the law would not exist in isolation, but that it fit within a matrix of existing New Jersey statutes. As a result, changes were necessary to, among other things, make correct and consistent all of the cross-references among the statutes. The limited number of substantive changes appear to be those that would be of primary concern to individuals who practice in this area of the law.

Mr. Cannel added that the committee members are very knowledgeable, experienced attorneys who have taken the time to put the proposed law in a New Jersey context. He suggested that, at this point, the most appropriate role for the Commission might be to review the draft and determine whether the Commission can support the proposal or not. Mr. Burke added that based on his review of this area of the law, the Commission could be comfortable asserting that it had met its statutory obligation, reviewed the law and could support this version of it.

Commissioner Burstein asked whether the proposed statute changes the established law in the State. Mr. Burke responded that, if enacted, the proposed Act would repeal four statutes, including the law pertaining to pet trusts, and that the proposed statute appeared to be appropriate for support, noting that the experts in the area think that the draft is an improvement over the current law. The approach of the committee was a very conservative approach; more conservative than the official text. The official text of the Act, for example, permits an oral trust while the New Jersey version, as set forth in the draft, requires a written document.

The Commission directed Staff to inquire of the committee whether it would like the Commission to review and comment on the project or remain uninvolved. Mr. Burke will prepare a brief report and recommendations for the next meeting and provide the redlined version of the committee's final draft report to the Commission so that the members will have all of the information at hand for their consideration.

Uniform Child Abduction Prevention Act

Marna Brown explained that she had just learned that the Chairperson-Elect of the Family Law Committee of the State Bar Association had decided to form a subcommittee to examine this legislation in more detail. She indicated that the sub-committee has not yet been formed. The Commission decided to wait until next month to see if the sub-committee has been formed and if there is someone that the Commission can contact regarding this project.

Title 39

In response to requests received, the determination was made to extend the deadline for the project to June 15, 2008 to allow for the submission of additional comments.

Laura Tharney briefly explained the rolling deadlines that were discussed with regard to submissions from the MVC and the League of Municipalities and Commissioner Bertone pointed out that extending the deadline an additional month would not be altering the deadline for the completion of the entire project. Ms. Tharney also said that she could immediately commence work on the modifications to the law since the beginning of the year, explaining that since a number of individuals and groups had downloaded the information from the website, she did not want to change the language on the website until the comment period closed to avoid a situation in which various individuals ended up working with different versions of the draft.

Title 22A

Laura Tharney began by advising the Commission how helpful her informal contact at AOC had been so far in this process and that additional information is still forthcoming. Ms. Tharney explained that the section pertaining to probate is still too large and unwieldy and that AOC will assist in the appropriate division of that single large section into several smaller sections. Ms. Tharney expects to receive that information before the time of the next meeting.

Ms. Tharney also explained that there were several other issues that she hoped to revise before the next meeting. She explained that an effort was being made to address the issue of the payment of fees to Sheriff's Officers and Special Civil Part Officers based on mileage, which has been described as problematic and unnecessarily cumbersome. Ms. Tharney suggested that if it was not possible to eliminate the mileage calculations entirely, there may be a way to reduce the number from hundreds of different mileage calculations throughout the State to some smaller number based on averages per county or some other system. She explained that she cannot determine whether or not this is feasible without speaking with representatives from the Sheriff's Office and the Special Civil Part Officers and that she had contact information for two groups representing those officers and would pursue this issue with them.

Commissioner Bertone asked for a general description of what the range is throughout the State and Commissioner Bunn asked why this information was in the statute rather than in a regulation. Commissioner Burstein asked Staff to provide some alternatives for the next meeting, and to advise what the federal courts do regarding this issue.

Ms. Tharney also raised the issue of a definitions section in this Title. She explained that since this section deals only with costs and fees, some of the more basic terms may be defined in other sections of the statute or in the Court Rules. She explained that Staff was conducting

searches to determine if, in fact, the terms on the list of proposed definitions that had been submitted to the Commission were defined elsewhere or if definitions might be appropriate in this Title.

Construction Lien Law

Marna Brown told the Commission that she had attended the Construction Lien Law ICLE seminar at the end of April for which the Commission's work had been made part of the program. She advised that several of the presenters at that seminar have already provided feedback to the Commission.

Ms. Brown explained that more than an hour was spent discussing the Commission's proposed changes, which had been the first agenda item. In general, the practitioners expressed appreciation for the work the Commission had done so far, and were pleased they had been asked to participate in the process of revising a statute they felt was long overdue for revision. Areas of primary concern include: (1) the content of the lien claim form itself, and the information it should include; (2) the calculation of the lien fund, focusing on using terms that those in the field use; and (3) in the residential context, what should be the treatment of work done on common elements (the roof, walls, etc.) of a common ownership development, such as a condominium; specifically, is it necessary to file one claim or more than one and upon whom should it be served? Another issue of great concern, an issue on which there is no definitive case law, is the question of how to distribute the lien fund on a pro rata basis, which the statute now requires but does not clearly explain.

Commissioner Burstein asked if there were issues surrounding the timing of filings and Ms. Brown said that when the question arose as to whether 60 days or 90 days was an appropriate time period for filing the NUB, AAA has advised that a 60 day window is sufficient. Mr. Cannel raised another issue regarding provisions that require action but no consequence for failure to do what is required. Commissioner Burstein asked that Staff identify and list those provisions so that a determination could be made as to how to address them. Commissioner Bunn suggested that one approach might be to determine what constitutes a complete lien filing. Commissioner Bertone added that an additional complicating factor is that not every participant knows every other participant on the job.

Mr. Cannel suggested that it was likely that several more drafts would be needed on this project.

Miscellaneous

The meeting is scheduled for June 19th.