

MINUTES OF COMMISSION MEETING
December 18, 2008

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7th Floor, Newark, New Jersey were Commissioner Vito A. Gagliardi, Jr., Commissioner Andrew O. Bunn and Commissioner Albert Burstein. Grace C. Bertone, Esq., of McElroy, Deutsch, Mulvaney & Carpenter, LLP, attended on behalf of Commissioner Rayman Solomon. Professor William Garland of the Seton Hall Law School, attended on behalf of Commissioner Patrick Hobbs and Professor Bernard Bell of Rutgers School of Law, Newark attended on behalf of Commissioner Stuart Deutsch.

Minutes

The Minutes of the meeting of November 20, 2008 were accepted as submitted after being moved by Commissioner Bunn and seconded by Professor Garland.

Poor Law

Mr. Cannel stated that it is his understanding that the Division of Family Development does not have substantive concerns at this time. No other comments have been received, but there was extensive consultation with interested parties before the Tentative Report was filed.

Professor Garland indicated that he had comments on the project and began by noting that 1-1(c) does not seem to be a sentence. It was agreed that this would be corrected by removing the word “to” and inserting “will” in its place. Professor Garland also said that the definition of “eligible alien” could be improved, noting that in (a) it refers to “qualified alien” which is not defined or described until the very last sentence of (g). He said that the word should be defined when it was first used. Commissioner Bunn suggested that the sentence in question could be modified to refer to the as-yet-undefined term and then add “as defined below”. Professor Bell said that it could also be added as an included additional definition.

Commissioner Burstein asked if it was unusual to have subparts within a definition and Mr. Cannel replied that it was standard and that he believed that the structure followed the federal law and that, as a result, he could not modify it.

Professor Bell observed that the term “qualified alien” is found in (a), (c) and (l). Mr. Cannel said that he would include a definition.

Professor Garland said that he had textual comments that he would provide to Staff rather than spending Commission time on those issues.

Commissioner Burstein said that in TANF, there is a definition that seems to be repeated on the top of the following page. Mr. Cannel said that he would strike the definition.

Professor Garland suggested that “department” should be defined since it is used throughout the text and Mr. Cannel indicated that he would add that definition.

With regard to the multiple authorizations to make regulations, Professor Garland asked if they could be consolidated into a blanket authorization. Mr. Cannel advised that the

authorizations are very specific and that he would have to review them to see if it would be appropriate to combine them. He said that it might be problematic to do so and added that the Commission did not wish to cause problems with the federal government regarding compliance with any requirements. As a result, he would only make changes pertaining to this issue if it could be done without causing problems in that regard.

In 2.2(c), Professor Garland suggested that the second sentence, the “participation rate” language, seems out of place. Commissioner Burstein said that the language was discordant in its current paragraph and Mr. Cannel said that he would include it in within subsection (j). Professor Garland said that in 2.2(f) there is a “may”/”shall” dichotomy and Mr. Cannel said that he will check to see if this language was taken directly from the existing law to see if it needs to be retained or can be corrected.

Professor Garland said that in 2.2(j) the language should read “Commissioner shall act” and that “shall insure” was also a possibility.

Professor Garland asked if 2.3(b)(5) concerning the status of aliens was necessary and he was advised that it was. He also suggested that in 2-6 there are a number of terms, including “illegal aliens”, “eligible aliens” and “legal aliens”. Commissioner Bunn said that “eligible aliens” is defined in the draft and that the definition includes a variety of subsections which contain other terms such as “... legal aliens”. Mr. Cannel said that he was not sure if this language is necessary any longer and will check.

Professor Garland pointed out that in 2-6(e), the language says “corrected” facilities and it should say “correctional facilities”. In addition, he suggested that the language is not clear because it is not obvious whether an individual would qualify for benefits if locked up in Canada. Mr. Cannel said that Staff could eliminate the language “federal, state or local” and leave it as “correctional facility” which would alter the draft to make it clear that if you are incarcerated, you do not qualify for benefits. Professor Bell asked if there was a distinction between the treatment of incarceration pending criminal trial and incarceration after conviction. Mr. Cannel suggested that there was also the question of the impact of civil commitment, and whether that was deemed to be incarceration or akin to incarceration.

Chairman Gagliardi said that Staff should prepare another draft consistent with the Commission’s comments. He said that Professor Garland’s changes should be reviewed and the Commission will revisit this in January. Mr. Cannel said that he would prepare a new draft.

Construction Lien Law

Commissioner Gagliardi indicated that after the last meeting, the only outstanding issue from a policy perspective was the security issue, which had been addressed in a Comment to the text. He asked if anyone else had any comments and no one on the Commission offered any additional comments. Commissioner Burstein moved to release the tentative report and Commissioner Bunn seconded the motion. The Construction Lien Law project was released as a Tentative Report.

Title 1

Mr. Cannel noted that a bill recently released from Senate committee makes one change to this Title to reflect current practice. The bill is a Codey/Kean bill presently pending and Mr. Cannel suggested that the change should be incorporated into the Commission's final report. Professor Bell also noted a correction to section 1A:5-3, which should read "in the" public interest. Mr. Cannel also advised that he had heard from OLS and the changes they proposed had also been incorporated. Commissioner Burstein moved to release this project as a final report and Professor Bell seconded that motion. The Title 1 project was released as a Final Report.

Uniform Trade Secrets Act

Commissioner Gagliardi noted that no comments had been made since this report was released as a Tentative Report. Professor Bell recommended that section 56:14-8(b) of the statute be divided into a subsection b. and c. so that the first sentence is separated from the remainder. With that change, Professor Garland moved to release this project as a final report which was seconded by Professor Bell. The Uniform Trade Secrets Act project was released as a Final Report.

Uniform Child Abduction Prevention Act

Commissioner Gagliardi said that this project had been discussed at the November meeting and, at that meeting, the Commission directed Staff to prepare a final report recommending that the Uniform Law not be adopted. That draft final report was reviewed by the Commission. Professor Bell moved to release the final report, which was seconded by Professor Garland. The report regarding the Uniform Child Abduction Prevention Act was released as a Final Report.

Pejorative Terms

Commissioner Gagliardi indicated that there had been no comments since this project had been released as a Tentative Report. Ms. Brown brought a change in the report to the Commission's attention, explaining that Staff had previously included in a footnote to the report a large number of pejorative terms to demonstrate the thoroughness of the research underlying the project. Upon further review, Ms. Brown eliminated the litany of pejorative terms as inappropriate. Professor Bell raised the issue that in a few places Staff had changed the term "competent" within the Legislative findings themselves, which seemed odd to him. Mr. Cannel explained that Staff had to do this because otherwise it would appear odd to have changes made one place but not elsewhere. He noted that, in any event, findings should never be included in the statute. Commissioner Burstein moved to have this project released as a final report and Commissioner Bunn seconded that motion. The pejorative terms project was released as a Final Report.

Miscellaneous

Chairman Gagliardi asked Staff to please distribute the list of Legislative Committee members to the Commissioners in January and to determine whether any of the Commissioners

knows any of the Committee members. Commissioner Burstein asked that a compendium of where the Commission stands on projects that have been previously released also be provided to the Commission by Staff. Chairman Gagliardi requested that Staff allocate time at the January meeting to review those projects so the Commission can make decisions on them.

The next Commission meeting is scheduled for January 15, 2009.