

## **MINUTES OF COMMISSION MEETING**

**June 21, 2012**

Present at the New Jersey Law Revision Commission meeting held at 153 Halsey Street, 7<sup>th</sup> Floor, Newark, New Jersey were Chairman Vito A. Gagliardi, Jr., Commissioner Andrew Bunn, Commissioner Albert Burstein, and Commissioner Virginia Long. Professor Bernard Bell of Rutgers University, School of Law attended on behalf of Commissioner John J. Farmer, Jr., Grace C. Bertone, of Bertone, Piccini LLP, attended on behalf of Commissioner Rayman Solomon, and Professor Ahmed I. Bulbulia of Seton Hall Law School attended on behalf of Commissioner Patrick Hobbs.

Also in attendance were: Susan Lyons and Marjorie Crawford, from the Rutgers - Newark School of Law Library; Dianne Oster, from the Seton Hall Law School Library; and Larry Fineberg of the New Jersey Land Title Association.

### **Minutes**

The Minutes of the May meeting were unanimously approved on motion of Commissioner Bunn, seconded by Commissioner Long.

### **Uniform Electronic Legal Material Act**

Laura Tharney explained that she had several guests present to comment on the Uniform Electronic Legal Material Act (UELMA). She explained that the UELMA was released by the Uniform Law Commission in July 2011 and that it is being promoted by the American Association of Law Librarians and is being discussed very seriously by the New Jersey Law Librarians Association. Liaisons from the Seton Hall Law School library and the Rutgers School of Law library asked that the Commission review this project for introduction in New Jersey and the project was brought to Staff's attention by Commissioner Bulbulia. Chairman Gagliardi asked what other states are doing about the Act. John Cannel indicated that, to this time, only Colorado has adopted the Act, and Dianne Oster added that California, Connecticut, Minnesota, Rhode Island and Tennessee introduced the bill in 2012.

The Act deals with several issues pertaining to the public availability of state legal materials. Many states are in the process of transitioning legal materials from strictly hard-copy (paper) availability to online availability and some states are discontinuing the availability of legal materials other than those available online. The states have not, however, uniformly identified their online legal materials as official. Even states that have identified the online materials as official have not all provided for authentication of those materials. In addition, states have also not addressed the issue of preservation of legal materials to provide permanent access in perpetuity.

In New Jersey, for example, the online legislative materials have not been deemed official and there is no method by which to authenticate them. It is not yet clear if any provisions have been made for the preservation of various versions of those materials. In addition, New Jersey legal materials are not uniformly available online.

Susan Lyons, of the Rutgers-Newark School of Law Library, spoke in favor of the Act, saying that legislation was needed to keep pace with the rapid move from paper to electronic documents in the legal world. She explained that the hard copies of important official documents that were once housed in numerous state repository libraries throughout the State are now available in only a handful of locations. Ms. Lyons stressed the need to have electronic forms of the documents official and authenticated. She added that electronic media have become increasingly less expensive to maintain and that the important long-term preservation of critical documents can be accomplished by electronic backup. Ultimately, electronic materials will be less costly, a benefit to the taxpayers, and can serve as a much-needed uniform system of authentication and preservation. At this point, some entities outside of state government are voluntarily putting legal materials online, but they can be difficult to find and search. Ms. Lyons added that a preservation system is needed to protect against document loss from catastrophic server failure or other types of intentional or inadvertent destruction.

Commissioner Burstein asked about the scope of the Act, and Ms. Tharney clarified that the Act has a very narrow focus and is drafted to deal only with state legal documents, as those documents are defined by the Act.

Commissioner Gagliardi said that the most significant sentence, on page 3 of the memorandum, states that there are no official versions of the administrative code or register online and that some of these materials are difficult to find in any format. He said that the fact that there is no compilation of the cases decided by the various administrative agencies in New Jersey can be a real problem for the public and for attorneys. Larger law firms sometimes have ways of locating or collecting these bodies of law, based on their practice areas, but smaller firms and individuals who lack those resources may find it impossible to locate relevant decisions from a particular agency. Chairman Gagliardi explained that the NJAR went out to bid twice in the early 1990s, and when there were no bidders, the State simply stopped publishing the material. The Rutgers-Camden School of Law voluntarily became a repository at some point thereafter, but there is a period of years for which there is absolutely no case law readily available.

Commissioner Gagliardi said that he welcomes this project and Staff was unanimously authorized by the Commission to proceed on motion of Commissioner Bell, seconded by Commissioner Bunn.

### **Uniform Interstate Depositions and Discovery Act**

Marna Brown said that this uniform law, known as UIDDA, sets forth the procedure for the subpoena of out of state depositions and document discovery. According to the Uniform Law

Commission, 26 jurisdictions have adopted the uniform law, including Delaware and New York. Not all of the jurisdictions have adopted the Act by statute. Some states, such as New York, adopted it by court rule. The uniform law is also pending in Connecticut and Pennsylvania.

Chairman Gagliardi asked John Cannel and Commissioner Burstein whether, while following the Commission's statutory obligation to review all uniform laws, the Commission has ever recommended a project to the courts. Mr. Cannel replied that he thought the Commission could serve a useful purpose by doing so here and the appropriate way to do that would be to send a letter to the Civil Practice Committee of the Supreme Court. Commissioner Burstein said that there are situations in which there is overlap between the two and times when it is appropriate that the Commission work in concert with the courts.

Ms. Brown said that because it is the Commission's mandate to review all uniform laws, arguably it was appropriate here to make a recommendation. She added that this is not the first time that the Commission had made recommendations to the court. In 1997, the Commission issued a report regarding the service of process statutes in which the Commission concluded that the regulation of service of process should be left to court rules.

Commissioner Bunn said that this was an important project and that uniformity is needed on this issue. If the Commission decides that this is not appropriate for the Legislature, then the project will at least have been directed to the proper entity by sending it to the court to consider. Commissioner Long agreed, noting that the court may have an issue with the Legislature getting involved in this area because of *Winberry* concerns.

Commissioner Bell asked whether the Commission should send a letter to the courts for their input on the situation first, before issuing a report. Chairman Gagliardi asked Commissioner Bell whether it was his recommendation to give the court a letter and request a response by a certain time. Commissioner Bell expressed concern about appearing to impose a deadline. Commissioner Burstein asked whether the Commission would be doing research or just sending a letter. He suggested that it might be more appropriate for the Commission to do some research first and issue a report rather than simply sending a letter to the courts.

Commissioner Burstein moved to have the Commission issue a report in the ordinary course that would recommend action by the court, rather than the Legislature. Commissioner Bunn seconded the motion. Mr. Cannel said that once the report was drafted, the Commission could make sure it was appropriate and within the scope of a Commission project. Ms. Brown said that she would include, in the report, information regarding what other states have done in this area. The Commission determined that the report could include proposed language if the changes proposed were very simple modifications to the current court rules, otherwise, it was agreed that the court would prefer to do the drafting.

## Property

John Cannel began the discussion of the revision of real property statutes by explaining that the New Jersey Land Title Association had proposed amendments to the Staff Draft Tentative Report and that Larry Fineberg is in attendance to present them. The Memorandum distributed to the Commission explains that Staff has no objection to the overwhelming majority of the proposed changes, some raise issues.

The Commission first considered section 4A-8. Mr. Fineberg explained the differences between his version and Staff's, but agreed that substantively the two versions are nearly the same. Mr. Cannel said that the version presented by Mr. Fineberg (the NJLTA version) is more thorough but perhaps more complicated, and that his version, derived from the current statute, is simpler to read but not necessarily simpler to execute. Commissioner Burstein said that he did not now have a preference and needed more time to consider the two versions because the language is so nuanced. He asked that the issue be held for the next meeting. The Commission concurred.

Mr. Cannel explained that subsection 9c was intended to alert practitioners that even if a deed met the requirements of section 9 it might be unrecordable. Mr. Fineberg said that he agreed with that goal, but wanted to make the language simple. Commissioner Bunn said that the shorter NJLTA subsection was sufficient for the purpose but that the word "nevertheless" was confusing and should be deleted. The Commission agreed.

Mr. Cannel explained that the issue with regard to section 11b was a judgment call as to whether there should be an explicit reference to quitclaim and bargain and sale deeds or only a citation to chapter 26A which deals with warranty deeds. Mr. Fineberg explained the historical basis for the provisions on quitclaim deeds. Mr. Cannel proposed deleting the last portion of the proposed text and adding "therein" to improve the wording. Commissioner Burstein asked that this issue be held for additional Commission consideration and decided in July.

Mr. Fineberg said that section 18 was proposed as a complete statement regarding conveyances pursuant to powers of attorney. Ms. Brown explained that subsection a. duplicated the Commission's Durable Power of Attorney Act. Mr. Fineberg agreed but said that that Act had not been approved. Chairman Gagliardi asked if 18 a. could be deleted, and the Commission agreed that it could, but requested that a note be placed in the comment explaining that subsection a. should be restored if the Durable Power of Attorney Act is not enacted.

Mr. Fineberg explained that section 19 was proposed because there may be some miscellaneous property actions for which a statute of limitations is not provided. Mr. Cannel said that he thought that the provision could be confusing, and be read to include adverse possession issues. Commissioner Bell asked whether it can be made clear that it does not apply to adverse possession. Commissioner Bunn asked that the section be re-drafted for the July meeting to make it clear that the provision is residual.

## **Mortgage Recording**

Mr. Cannel said that he received an email from the Constitutional Officers Association of New Jersey on behalf of the county clerks and had spoken with the sender in an effort to arrange a day and time to meet since he is interested in feedback from the clerks. He added that more consultations on this project are necessary and that he expects to meet with David Ewan of NJLTA and still hopes for more feedback from banking interests. Chairman Gagliardi recommended tabling consideration of the project until we have more input. The Commission concurred.

## **Miscellaneous**

Laura Tharney said that Senator Scutari's bill was discussed at a Senate Judiciary Committee hearing earlier in the day, but was held in anticipation of revisions which were described as an effort to close loopholes that still exist in the law. Ms. Tharney also mentioned that Alex Fineberg would be leaving his Commission Staff position since he had accepted another job. The Commission expressed appreciation for Alex's contributions and wished him the best of luck.

Marna Brown reported that the adult guardianship bill had been released in the Assembly Committee and was to have been voted on by the full Assembly this afternoon. She anticipated that it would pass both houses and be on its way to the Governor's desk. Mr. Cannel said that the Limited Liability Company bill also was up for vote this afternoon and that he anticipated a similar result. Ms. Brown said that the pejorative terms bill was completed by OLS and about to be introduced.

Chairman Gagliardi said that this was a remarkable report of events at this time in the legislative session.

The next meeting, on July 19, 2012, was rescheduled for 10:00 a.m. with the agreement of all present. The meeting was adjourned.