

## **MINUTES OF COMMISSION MEETING**

**May 22, 2014**

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 (participating by telephone). Professor Bernard Bell, of Rutgers School of Law - Newark, 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.

Robyn A. Veasey, Esq. and Gary Mitchell, Esq., of the Office of Parental Representation, State of New Jersey, Office of the Public Defender; Mary McManus-Smith, Esq., of Legal Services of New Jersey; and Liza Kirschenbaum, Esq., of the Court Appointed Special Advocate of New Jersey (CASA); were also in attendance.

### **Minutes**

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

#### **Title 9 – Children; Abused, Neglected and Dependent Children**

John Cannel noted that commenters had suggested that the term “law guardian” could be confusing to some, given the different contexts in which it is used. Asked by Commissioner Bunn for the definition of “parent or guardian,” which Mr. Cannel said could also be confusing, he provided a definition which included “foster parents and other custodians.” Mr. Cannel said also that a teacher at a boarding school and a custodian could both be considered “guardians.” When Commissioner Long suggested omitting the term “guardian” if it caused confusion, Ms. McManus-Smith informed the Commission that “guardian” can be a confusing term, saying that where the relationship of parents is more of a kinship, a guardian’s relationship is not. Commissioner Burstein indicated that there were forms prepared by the Administrative Office of the Courts (AOC) that included some of the terms s being discussed and suggested that a review of those forms might be of assistance. It was determined that Mr. Cannel would contact AOC to discuss the proposed removal or modification of terms from this definitions section of the statute.

Gary Mitchell explained that, within the definition of “parent or guardian,” the term “paramour” is inaccurate, since its meaning is associated with adultery. Upon Mr. Mitchell’s assertion that “romantic partner” does not suffice as a substitute, Commissioner Long suggested eliminating the term “paramour” altogether.

In response to the definition of “child abuse” that had been provided by Mr. Cannel, Ms. McManus-Smith pointed out that the word “risk” in “risk of injury” should have a qualifier and should say “substantial risk.”

Mr. Cannel noted that there is no “imminence” in the definitions and asked whether there should be. Chairman Gagliardi asked if anyone advocated using the term “imminent.” Commissioner Bunn inquired about the definition of “injury,” which is included in section 9:27-1. Mr. Mitchell asserted that “imminent” is an essential element in the definitions and described a case in which an appellate judge emphasized the temporal element. He said also that both risk and injury should be imminent at the time of the finding and that actual injury and cause should be reintroduced. Commissioner Long asked whether “imminence” relates to remedies. Mr. Mitchell answered in the negative and indicated that the section should be amended to include “imminent risk.” Having read the appellate decision discussed by Mr. Mitchell, Commissioner Long explained that she was not certain that “imminence” was an appropriate component of the definition. Mr. Cannel added that the facts of the injury were not included for good reason and there is little justification for court involvement if there is no risk to a child. Chairman Gagliardi pointed out that making amendments would result in a less protective statute. Asked for opinions regarding “imminence” and “injury or risk of injury,” the Commission expressed a strong preference to leave the language as is.

When asked by Chairman Gagliardi about the human trafficking provision, Ms. Kirschenbaum replied that there are jurisdictional considerations and that the federal government is looking at revising the federal definition of “neglect” and “abuse” to include human trafficking. Mr. Cannel added that the citation to the criminal code seems to indicate that guilt must first be established. Chairman Gagliardi asked whether 9:27-1 subsection b.(2) should be deleted, the guests responded in the affirmative. Chairman Gagliardi asked that Mr. Cannel review the federal statute and report back to the Commission.

With regard to 9:27-1 subsection c., Commissioner Long expressed concern that the provision stating that an inability to provide housing or other essentials due to a lack of means might insulate parents who were not providing those things as a result of a lack of effort, rather than a lack of means. Mr. Mitchell replied that the case raising the issue giving rise to that language involved a parent who did take action to provide for children and said that adding the term “involuntary” to address the concern raised could itself be problematic. Chairman Gagliardi noted that the situation of an able-bodied person choosing to live in squalor should be addressed. Mr. Cannel said that the question is moot if the child is determined to be “in need of services” and promised a new draft within one week.

With regard to the dispositional hearing pursuant to 9:27-31 and the time limit of 30 days, Mr. Cannel explained that while the Legislature did not intend to leave the child in limbo; the 30 day time period was described as unrealistic and the current goal is for courts to resolve parental rights issues within 180 days. The question posed to the Commission was whether a time limit

should be included in the statute and, if so, what it should be. Commissioner Long commented that it would be inappropriate to have no reference at all to the number of days. Commissioner Bunn noted that changing what is in the statute now is a policy decision. Ms. McManus-Smith responded that the legal requirement of 30 days is unrealistic and that 75 percent of cases are resolved in 180 days. She added that the cases involve constitutional rights and that an unrealistically short time frame severely impacts the ability of the parties to prepare and to provide necessary reports that will impact parental rights. The Commissioners voted unanimously in favor of Commissioner Burstein's suggestion to address the time period in the comments, explaining there that the issue of the time limit was peculiarly within the scope of the Legislature and, as a result, had not been modified by the Commission, since it would be arbitrary to choose a new date.

Regarding the last major issue identified by Mr. Cannel, 9:27-17, it was determined by the Commission that a resolution would be deferred to allow guests to speak with Mr. Cannel prior to the next meeting. Mr. Cannel will discuss the matter with the commenters and prepare an updated draft of the Report.

### **Revised Uniform Law on Notarial Acts/N.J. Notaries Public Act**

Jayne Johnson presented a Draft Tentative Report based on the Revised Uniform Law on Notarial Acts (RULONA) which provides minimum standards for notarial practice and governs the notarization of tangible and electronic records. The Report adopts most provisions of RULONA but incorporates recommendations from commenters and language from the existing statute to preserve standards that are integral to New Jersey practice.

Ms. Johnson stated that the Report incorporates the recommendations presented by the New Jersey Land Title Association at a prior meeting. Ms. Johnson described the success of Staff's most recent outreach efforts and indicated that she anticipates receiving additional feedback on the proposed language. Commissioner Burstein commented that New Jersey attorneys' notarial function is sometimes questioned out of state. As a remedy, Commissioner Burstein suggested adding to the Comments following the Definitions section of the proposed Act, N.J.S. 52:7A-2, the term "attorney" to the existing list delineating individuals authorized by law to serve as notaries public in New Jersey. The Commission voted unanimously to release the Tentative Report with that addition on motion of Commissioner Burstein, seconded by Commissioner Bunn.

### **Equine Activities Liability Act**

Vito Petitti presented a Draft Final Report incorporating all the changes approved at the April Commission meeting. Commissioner Long questioned the language "to the extent practicable" in Section 5:15-9 subsection a., and suggested removal of the phrase. Commissioner Bunn stated that the last line of Section 5:15-5 should read ". . . duties and responsibilities under

this act.” The Commission voted to release the Final Report with those revisions on motion of Commissioner Bell, seconded by Commissioner Burstein.

### **Base Salary**

Laura Tharney presented a Draft Tentative Report incorporating the change to N.J.S. 40A:10-21, subsection b., to reflect the determination of the Court in *Paterson Police PBA Local I v. City of Paterson*, 433 N.J. Super. 416 (App. Div. 2013) by including the language “as ‘base salary’ is defined in N.J.S. 34:13A-16.7” after the reference to “base salary” in that subsection.

Commissioner Bell expressed concern about the selection of that statutory section for the definition of “base salary” and also asked whether, if that was the appropriate section on which to rely, the definition of “base salary” should instead be incorporated in its entirety in subsection b. Ms. Tharney explained that she had followed the guidance provided by the Court but would certainly ask commenters whether, in their view, it was appropriate to do so. She added that including the definition, rather than simply the statutory reference, meant that if there was a change to the N.J.S. 34:13A-16.7 definition of “base salary” at some point, that change would not be picked up in N.J.S. 40A:10-21.

The Commission voted to release the Tentative Report on motion of Commissioner Long seconded by Commissioner Bunn, and asked that Ms. Tharney seek comment both on the issue of whether the reliance of that particular definition of “base salary” was appropriate in this context, and also on the issue of whether there was any objection raised to the incorporation of the statutory reference (rather than the entire definition) so that the two statutes would remain consistent if there was a change to N.J.S. 34:13A-16.7.

### **Uniform Protection of Genetic Information in Employment Act**

Vito Petitti began by explaining to the Commission that preliminary research and drafting for this potential project was conducted by Rutgers School of Law – Camden student, Amanda Follett, and that Staff had prepared an update Memorandum rather than an initial Presentation Memorandum since this project is based on a Uniform Law Commission (ULC) Act involving the employment-related collection, use, retention, and disclosure of genetic information. Mr. Petitti requested the Commission’s authorization to conduct further research and outreach to determine whether the Uniform Protection of Genetic Information in Employment Act (UPGIEA) in its entirety or in part should be recommended for adoption in New Jersey.

Mr. Petitti explained that a majority of states, including New Jersey, have enacted their own statutes regulating the manner in which employers collect, use, retain, or disclose employees’ genetic information. In 1996, New Jersey enacted one of the most comprehensive laws protecting genetic information, known as the Genetic Privacy Act (GPA). In 2008, Congress passed the Genetic Information Nondiscrimination Act (GINA) in response to the

explosion in the science of genetics and in recognition of the potential for discrimination based on genetic information. Mr. Petitti stated that the ULC identified a need for states to uniformly regulate the disclosure and use of genetic information in the workplace and to prevent misuse of the information by enhancing individual's privacy rights.

Commissioner Bunn questioned whether the New Jersey statute is more comprehensive than the federal statute. Mr. Petitti stated that from his preliminary research it appears the New Jersey statute is more comprehensive than the GINA. Mr. Petitti added that authorization from the Commission to conduct additional research in this area will allow identification of areas where the uniform law may bolster the existing state statute beyond the current federal protection. Commissioner Bulbulia suggested that any additional research should include review of the federal statute to determine whether it includes an express preemption clause.

The Commission approved Staff's request to conduct further research and outreach to evaluate whether the UPGIEA in its entirety or in part should be adopted in New Jersey.

#### **Miscellaneous**

The Commission meeting was adjourned on the motion of Commissioner Long, seconded by Commissioner Bell.