

MINUTES OF COMMISSION MEETING

April 16, 2015

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 Andrew Bunn, Commissioner Virginia Long, and Commissioner Anthony Suarez. Professor Bernard Bell, of Rutgers School of Law - Newark, attended on behalf of Commissioner Ronald K. Chen and Grace C. Bertone, Esq., of Bertone Piccini LLP, attended on behalf of Commissioner John Oberdiek.

Also in attendance were: Sue Lyons, Law Librarian, Rutgers School of Law – Newark; Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law – Newark; Dianne Oster, Government Documents Librarian, Seton Hall School of Law; and Alida Kass, Esq., Chief Counsel, N.J. Civil Justice Institute.

Minutes

The Minutes of the March 2015 Commission meeting were unanimously approved on motion of Commissioner Suarez, seconded by Commissioner Bertone.

Uniform Electronic Legal Material Act

Regarding her Memorandum to the Commission concerning the Uniform Electronic Materials Act (“UELMA”), Susan Thatch explained that the Uniform Law Commission adopted UELMA in 2011 to create a uniform system for preserving and securing authentic electronic legal materials. Ms. Thatch stated that UELMA has been enacted in 12 states and introduced in an additional four states. She further explained that the Commission had previously discussed UELMA and Staff requests guidance on the direction of this project.

Chairman Gagliardi discussed the difficulties practitioners frequently encounter when seeking to obtain administrative law decisions. He added that the inability to consider or refer to agency rulings is one of the many challenges practitioners face due to the lack of or infrequent publication of administrative law decisions.

Commissioner Bunn added that the proposed language must define the limits of what information will be published to identify which materials will be excluded. He observed that decisions and bulletins must be published, but the agencies should not be required to post irrelevant information on their websites, such as interoffice memoranda. He listed three possible categories of information, and encouraged excluding materials in the first category from publication: (1) interdepartmental communication, (2) regulations, decisions, and other binding documents; and (3) materials that provide guidance, such as agency bulletins. Commissioner

Long added that work in this area must be prospective and the proposed statutory language must identify that the act governs prospectively.

Commissioner Bunn noted that the fee-shifting provision in the Open Public Records Act statute (“OPRA”) provides a model for adding an enforcement mechanism to the act. Commissioner Bell observed that Staff may find a framework to modify the uniform act, by looking to the New Jersey Division of Revenue Enterprises and Services or the Office of Management and Budget as a federal model. Commissioner Bell mentioned that modifications may also include an information commissioner responsible for digitizing the work of state agencies.

Chairman Gagliardi agreed that while the proposal should modify the uniform act, particularly to add an enforcement mechanism, he cautioned that the Commission should steer away from recommending additional bureaucratic entities. He then invited the commenters to share their views on UELMA.

Dianne Oster, Government Documents Librarian at Seton Hall School of Law, expressed support for passage of UELMA or a modified version of the act in New Jersey. Ms. Oster illustrated the need to preserve and authenticate digital materials by discussing the removal of legal material spanning several decades from the Public Access to Court Electronic Records (PACER) website without notice. She asserted that this material was subsequently reinstated, but that denying the legal community access to these materials for even a limited period caused significant harm. Ms. Oster emphasized that due to the ephemeral nature of print material, a uniform approach for maintaining electronic materials is paramount. Ms. Oster explained that modifying specific provisions of the act should be discussed, but the focus should remain on ensuring that authentic electronic legal materials are available to the public.

Sue Lyons, Associate Director for Public Services, Law Library, Rutgers School of Law – Newark, also spoke in support of UELMA. She stated that the market for print materials is in peril and she stressed the need to find a solution for preserving documents before they go out of print. Ms. Lyons pointed out that there is no uniformity regarding the preservation of website materials. She described the limitations that exist for authenticating and protecting electronic legal materials, because on average materials remain on a website for less than 90 days. Ms. Lyons offered the example of Pennsylvania’s recent adoption of a modified version of UELMA to illustrate the steps neighboring jurisdictions are taking to preserve their electronic legal materials.

Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law – Newark, also spoke in strong support of legislation to preserve electronic legal materials, letting the Commission know she is responsible for adding metadata to the electronic files which store administrative law decisions. She expressed concern that the most recent administrative law decision provided to the law library dates back to June 2014. She also discussed procedural issues which resulted in the law library receiving improperly marked electronic publications. Ms. Crawford concluded by stating that many law students mistakenly believe that all legal materials are available online when, in reality, the total quantity of online materials still pales in comparison to the number of print holdings actually collected and preserved by New Jersey law

libraries. Nevertheless, Ms. Crawford stated that making electronic legal materials available to the public is crucial to preserving our nation's democratic tenets, and most importantly, the constitutional rights of our citizens.

Commissioner Bunn commended the presentations of the law librarians and encouraged the Commission to respond to their entreaty to act, and not to allow the nuances of the uniform act to preclude drafting a modified version of the act. He agreed with the sentiment of the law librarians that in this area of the law some action, although imperfect, is better than no action at all.

Chairman Gagliardi agreed and stated that he looked forward to seeing a report reflecting the guidance provided by the commenters and the Commission.

Uniform Limited Partnership Act

John Cannel informed the Commission that he had revised the Draft Tentative Report relating to the Uniform Limited Partnership Act, saying that the difference between existing and proposed statutory language was insubstantial because all such terms regulating partnerships can be varied by the partnership agreement.

Commissioner Bunn inquired as to whether the phrase "or written by agreement" was added to the statutory language in the draft Tentative Report. Mr. Cannel stated that it has not changed and will not make a substantive difference to the report. Commissioner Bunn moved to release the report, seconded by Chairman Gagliardi, the motion passing unanimously.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Jayne Johnson presented a memorandum concerning the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. The act provides uniform procedures to ensure that out-of-state protection orders are recognized and enforced as required by federal law. Staff seeks to determine, through outreach, whether codifying the existing Attorney General Guidelines or recommending adoption of the act will further the legislative goals of the state statute.

Commissioner Bunn questioned the extent of judicial enforcement for orders from other jurisdictions. Ms. Johnson replied that states must enforce the terms of valid protection orders from an issuing state, as if it was entered by the enforcing state. Mr. Cannel pointed out that, in the past, there had been problems enforcing protective orders on behalf of victims from other states. Ms. Johnson agreed, but informed the Commission that in New Jersey the protocols created by the Attorney General Guidelines now provide enforcement to out-of-state orders.

Commissioner Long asked whether the Attorney General Guidelines address the issues considered by the Uniform Act, to which Ms. Johnson responded in the affirmative. Commissioner Long stated that codifying the guidelines increases the burden of making changes or revisions to the protocols.

Commissioner Bell asked whether the guidelines are sufficient. Ms. Johnson replied that, by all accounts from her preliminary research, the guidelines are sufficient, but the issue remains as to whether the benefits of codifying the guidelines outweigh the limitations identified by Commissioner Long. Such benefits include (1) adding the weight of statutory authority to the protocols and (2) providing public notice, which may enhance public awareness about the enforcement of out-of-state protective orders. Commissioner Bunn noted the importance of ensuring that the guidelines are readily accessible to the public.

The Commission voted unanimously to seek outreach from stakeholders on the Uniform Act, and then determine whether to proceed with this project.

Uniform Common Interest Ownership Act

Regarding his Memorandum to the Commission discussing the Uniform Common Interest Ownership Act (“UCIOA”), John Cannel explained that the Uniform Law Commission released the UCIOA in 2007 as an update to its 1994 Uniform Common Interest Ownership Act. Mr. Cannel stated that the Commission has worked in this area previously, but its efforts did not result in legislative action.

Mr. Cannel asserted that the issues surrounding common interest ownership are difficult but tremendously important, noting that the Commission’s prior efforts in this area have shown it to be contentious. Any statutory drafting not based on consensus is likely to be opposed by both managers and unit owners.

Chairman Gagliardi noted that the Commission has a statutory obligation to evaluate Uniform Acts. Commissioner Bell inquired as to whether it would be possible for the Commission to comment on the UCIOA. Mr. Cannel responded that the Commission has commented on other Uniform Acts by recommending against enactment.

Commissioner Bunn stated that incorporating even limited aspects of the UCIOA into New Jersey’s law could prove to be incremental progress. Mr. Cannel responded that there is an issue of precedent with common interest law; the organizations are not municipalities but must parallel municipal ordinances. However, he further noted, they cannot be treated as corporations because individuals cannot necessarily move residences easily.

Commissioner Long acknowledged that very contentious litigation has occurred between common interest governing bodies and individuals. Mr. Cannel agreed, saying that it is unclear how New Jersey’s condominium law operates in certain situations.

Commissioner Bunn stated that clarification of the law would be helpful. Commissioner Bell expressed concerns about drafting legislation that would prove difficult to enact and suggested that the Commission comment on the UCIOA instead. Commissioner Bunn agreed, but noted that drafting might be useful if even one provision can be enacted.

Chairman Gagliardi stated that many individuals are affected by this area of law, so it can be a very worthwhile project if the Commission takes a measured view. He directed Mr. Cannel to provide further analysis of the relevant issues for the Commission's further evaluation.

Retroactive Child Support Orders

Vito Petitti discussed a Memorandum to the Commission regarding retroactive child support orders. He informed the Commission of Staff's preliminary outreach to potential commenters in an effort to assess the scope of the problem presented in the recently published *Cameron v. Cameron*. Mr. Petitti explained that the Family Bar understands and appreciates the decision in *Cameron*, that family judges have the authority to order probation departments not to report child support arrearages in cases involving non-delinquent obligors. At the same time, the Department of Human Services has expressed a concern regarding the potential costs of implementing new procedures after *Cameron*, and offered specific ideas regarding possible revision of existing statute.

Mr. Petitti asked the Commission for its authorization to proceed with the project, working with various constituencies to propose appropriate revisions that will bring the statute in line with the recent court decision.

Commissioner Bunn stated that this case highlights an egregious issue that needs to be addressed. He agreed with the Court's conclusion that an individual should not be penalized for technical arrears at the time they are first assessed. Commissioner Bunn observed that this is an issue of timing and that the monthly payment could be recalculated to include the arrears, in situations where the parent is unable to pay the arrears in a lump sum, when they are first assessed.

Commissioner Bell stated that reporting the technical arrears to the credit bureaus should not be a consequence for individuals who are current in their child support payments, when they are first assessed technical arrears. Moreover, it should not impact their ability to obtain other licenses or services, including a driver's license or hunting permit.

The Commission voted unanimously to approve work on this project.

Miscellaneous

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