

MINUTES OF COMMISSION MEETING
January 18, 2007

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

Minutes

Chairman Gagliardi corrected the December 21, 2006 Minutes to read that he had, in fact, concurred in the Commission vote to distribute the Residential Mortgage Satisfaction Act as a Final Report. Commissioner Bunn moved that the Minutes be accepted as corrected. Commissioner Bertone seconded the motion. The motion carried.

Title 39 – Motor Vehicles

Laura Tharney briefly described to the Commission areas in which she was seeking additional guidance regarding the penalty provisions. She asked if the Commissioners had noted any offenses that would be more appropriately moved to another class, and if the Commissioners had any comments regarding the imposition of jail time and community service. She explained that the offenses were categorized based on the fines currently assigned to them. In response to a question from Commissioner Gagliardi, Ms. Tharney said that Classes A and B, which do not provide for jail time, do include offenses for which jail time is provided in the current statute. Mr. Cannel explained that, under the current statutory scheme, the severity of the penalties is, to some extent, tied to the age of the statutory section describing the offense. There are older statutory sections which assign a penalty of \$25 or \$50, but which also provide for the possibility of jail time. The statutory sections drafted in later years generally do not provide for jail time unless the monetary penalty is more substantial.

Chairman Gagliardi asked if Ms. Tharney had spoken to the traffic safety officers about the classification of penalties. Ms. Tharney said that she had, and that the officers overwhelmingly favored leaving the descriptions of the offenses in the sections in which they are now located. Instead of a penalty being included in every statutory section describing an offense, however, the individual statutory sections would contain a reference to the offense as Class A, B, C, etc. The penalties, by class, would be set forth in a separate section of the statute. The officers preferred such an arrangement to leaving the statute in its current form, and to stripping both the offense and the penalty language from all current locations and consolidating it all into a single section, or several sections. Chairman Gagliardi suggested that Municipal Court judges should be asked to review the January 8, 2007 memorandum and make suggestions or comments.

Commissioner Burstein asked that Dennis Bliss's successor in the AOC be contacted and asked to review the material as well.

The Commissioners discussed the following sections:

4-104 on page 5: Commissioner Bunn suggested that this violation be moved to Class A.

4-197.21 on page 6: Professor Garland pointed out that this section is included in both Class C and Class D. Ms. Tharney said she will review and correct any error regarding that section.

4-23 on page 9: Commissioner Burstein suggested that the provisions pertaining to "beating" and "maltreating" a horse should be removed from motor vehicle statutes and put into the statutory sections which deal with the treatment of animals.

3-33 on page 4: Commissioner Bunn said that this Class C violation (displaying fictitious license plate number and related violations) should receive a lower penalty than some of the Class B violations. Ms. Tharney acknowledged that there are some violations for which that seems to be true, and that, in general, Class C is troubling because the penalties are significant, the range of the penalties is substantial, and many of the offenses do not fit neatly in the Class. It was agreed that 3-33 would be moved to Class B.

3-4 and 3-4b on page 4: The question was raised as to whether an innocent misstatement of fact for a registration or a temporary registration should be moved to Class B.

4-56.2 and 4-56.5 on page 5: Commissioner Bertone suggested moving the abandonment of a vehicle, where it is not willful, to Class B.

5-43 on page 5: This offense is in Class C and Class D and appears to be in the nature of official misconduct, so it will be removed from those classes.

5-36 on page 10: Professor Garland questioned the inclusion of this item in the Class and Mr. Cannel suggested that it does not belong in Class F and should be removed.

Commissioner Bunn recommended that, in the interest of consistency with the classification system, community service of up to 30 days should be imposed for Class C violations.

Ms. Tharney asked the Commissioners what they thought about the range (\$100-\$500) in Class C. She indicated that she was concerned because certain of the current statutory sections include "stepped penalties" pertaining to first, second and subsequent offenses. Including them all in Class C, even though that is where their penalty ranges fall under the current statute, would disrupt the scheme established by the Legislature. Chairman Gagliardi asked that Staff solicit the opinions of traffic safety officers, the AOC and the municipal court judges, and the municipal practice committee of the State

Bar Association to see if those groups recommend a change. If so, then the classifications can be revisited.

Married Women's Property Act

Chairman Gagliardi was interested in the 1953 amendment to Sections 37:2-9 and 37:2-11 on page 3. Mr. Cannel said the last substantive amendment was added in 1920 (regarding women's own wages); the 1953 amendment was the type that made technical changes such as changes in the names of courts. Mr. Cannel said that the real issue is whether repeal of one of these sections could be interpreted as restoration of the common law of the early 19th century.

Commissioner Burstein asked whether issues in the Act are covered in other titles such as 3B and 46. Commissioner Bertone said that dower/curtesy is a fading issue. These are now Title 3B issues. Professor Garland raised the issue of domestic unions. He suggested putting in a comment that this project has no effect on domestic partnerships.

Chairman Gagliardi asked if staff had talked to anyone. Mr. Cannel said that OLS expressed disappointment that the Commission did not do this earlier. Commissioner Pressler told Mr. Cannel that she has no problem with repeal of these section. Mr. Cannel has not yet spoken to other yet. Commissioner Burstein suggested showing the tentative report to women's rights organizations.

Commissioner Burstein moved to release it as a Tentative Report. Commissioner Bunn seconded the motion. The motion carried.

Criminal Code Causation

Mr. Cannel said that "reasonably" should go in front of "foreseeable" because *State v. Martin* uses that language. The Commissioners agreed.

Chairman Burstein said that subsection (c) of 2C:2-3 is awkward. Mr. Cannel said that he could divide it into two sections. Following discussion, the Commission decided that it should be divided into two sections. In the comment, Mr. Cannel is to add a reference to *State v. Martin*.

The Commission will look at a new draft, with the changes, at the next meeting.

Land Use Variance

Mr. Cannel asked the Commission to advise if the changes to the statutory language are going in the right direction.

Ms. Bertone noted that (c) variances are handled by both planning boards and zoning boards of adjustment. Commissioner Bunn raised the issue of including the

negative criteria in subsection (a), observing that case law suggests that for a (c)(2) variance, the negative criteria are not applied as they are for (d) variances. The determination was made to remove the negative criteria language from section (a) and include it only in (c)(1) and (d). Commissioner Bunn suggested the inclusion of case law citations in the Comment to make it clear that the modifications to the language are not intended to substantively change the law except to make it conform to the law as it has been developed and clarified by the decided cases. Ms. Tharney suggested sending it to the land use section of the State Bar Association before releasing it as a report to the public.

Miscellaneous

The Commission will next meet on February 15, 2007. With regard to the other proposed meeting dates, Chairman Gagliardi proposed meeting on Wednesday, December 19, 2007, rather than on the Thursday, and asked that other Commission members check their calendars for conflicts with the other meeting dates before the February meeting.

Judith Ungar reported that John Cannel and she will next meet with the Division of Family Development representatives on January 30, and will have a report for the Commission at the next meeting.