

**MINUTES OF COMMISSION MEETING**  
**June 21, 2007**

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 O. Bunn, Commissioner Albert Burstein, and Commissioner Sylvia Pressler. Professor Bernard Bell of Rutgers Law School, Newark, attended on behalf of Commissioner Stuart Deutsch.

Also attending were Edward Eastman and Lawrence J. Fineberg of the New Jersey Land Title Association.

**Minutes**

Chairman Gagliardi requested that the Minutes of the May 17, 2007 meeting be modified since the entire statute pertaining to the flag salute was not held unconstitutional, but rather the requirement that a student stand and salute the flag was determined to be unconstitutional in 1978. He indicated that, to clarify this point, the first sentence under "Flag Salute" should begin: "The statutory requirement that a student stand and salute the flag..."

**Married Women's Property**

John Cannel explained to the Commission that two provisions had been submitted regarding this project and that he had initially drafted subsection (b) of the section recommended for enactment but was not sure if that proposed subsection was really necessary. Lawrence J. Fineberg indicated that while he initially thought it was important to include such language, after reviewing the issue he did not think that it was necessary. Commissioner Pressler suggested that subsection (a) begin: "Spouses and civil union partners may..." thereby making the next sentence unnecessary.

Commissioner Pressler moved that the amended text be released as a Final Report. Commissioner Bunn seconded the motion which passed unanimously.

**Adverse Possession**

Mr. Cannel framed the issues and noted that there is a significant disparity in time periods pertaining to adverse possession from state to state.

Commissioner Pressler said that 2A:14-7 seems to have a statute of limitations which is separate from the accrual period. Mr. Cannel said that he does not think there should be separate periods, he suggested that the Commission should consider: 1) how much time must a property continuously be "adversely possessed" (20 years, 30 years) before the right and title to that property are transferred? 2) what is the statute of

limitations if someone else, not the adverse possessor, wants to bring an action to quiet title or for ejectment? (3) should those time periods be the same? and (4) how should state lands and municipal or county lands be treated for purposes of adverse possession?

Commissioner Pressler suggested redrafting the end of the proposed statute to state that any action must be brought during the period of occupancy, and to clarify when title vests in the adverse possessor.

Ed Eastman raised another issue, that of riparian lands and the problems associated with competing claims to those lands. He referred to the 1790 case of *Jersey City v. Hall*. He explained that one of the difficulties with riparian lands is that you are dealing with lands on which fill was placed many decades ago, oftentimes not by the current owner of the land. At the time, fill was not thought to be a negative impact on the land, but a way to make land that was intermittently wet into usable land. Purchasers of the land may have no idea that the State of New Jersey claims rights to the land that they purchased for value, sometimes many years before maps showing the State's claims were made widely and publicly available. The State, however, aggressively lays claim to the lands. According to Mr. Eastman, an individual property owner who is dealing with riparian lands may be surprised to find, when they attempt to sell their property, that the State claims 85% of the proceeds for itself, this eliminating nearly all of the value of the land for the owner. He also noted that the impacts can vary from one side of the street to another, and from one neighboring lot to another, so that an individual may own a house that rests on filled land and, as a result, stand to lose the value in her home if she attempts to sell, while a next door neighbor is not so affected.

Commissioner Pressler asked if specifically excepting riparian lands from the standard adverse possession statutory language would solve the problem, and asked Mr. Eastman's opinion regarding a fair time period. He said that he thought a 40 year time period would protect most of the owners who would otherwise lose nearly all of the value of their property. Professor Bell asked if riparian claims existed in areas other than the specific area of the New Jersey shore that Mr. Eastman had referred to in his initial description of this issue. Mr. Eastman said that they did and that 17 of the 21 counties in New Jersey are affected by riparian claims. Mr. Fineberg suggested that part of the problem is that New Jersey is unusually aggressive in its pursuit of riparian claims as compared to other states. He also noted that it appeared that New Jersey's basis for its claim to riparian lands seems, historically, to have resulted from a misinterpretation of the English common law pertaining to this issue.

Mr. Cannel suggested that the Commission should hear from the Attorney General's office and the Department of Environmental Protection on this issue.

Commissioner Pressler suggested that one option would be to do a validating act pertaining to lands filled in the past that were, prior to being filled, formerly tidal or riparian lands. Mr. Eastman said that he would send a proposed validating act to Mr. Cannel.

The Commission determined that, in the draft language, State lands (with the possible exception of state claims to riparian lands) would not be subject to adverse possession and that municipal and county lands used for or dedicated to a public purpose would likewise be exempted.

Chairman Gagliardi directed that Mr. Cannel revise the proposed statute to reflect 20 and 30 year time periods for adverse possession while leaving open the issue of how best to deal with riparian lands pending receipt of input from the Attorney General's office and the DEP.

### **Title 22A – Fees**

Laura C. Tharney distributed an updated memorandum. Chairman Gagliardi said that there was a limit to the extent to which the Commission could review this project until it received other input concerning things like which provisions are obsolete and can be removed. Ms. Tharney indicated that she would have additional information for the Commission at the next meeting, but that in the interim, she was seeking comments on the structure of the project, which was unwieldy in its current form. Commissioner Bunn suggested following the format of the Lawyer's Dairy pages setting forth the fees as a more streamlined example.

Commissioner Pressler asked what a notice of petition for review is (found in 22A:2-7(a)(1)) and suggested that the term be deleted. She also suggested that it is not necessary to identify, in the statute, the party by whom a filing is made, and that simply identifying the fee to be charged for each paper would be sufficient. Commissioner Pressler said that the opening sentence of 2-7(a)(1) should be rephrased to read "The fee for filing the following papers is..." She also said that 2-7(a)(2) is too wordy and that the language referring to "any inferior court..." should be replaced with "a municipal court" and the language further streamlined. Commissioner Pressler also suggested that 2-7(b) should begin with the words "Initial Pleadings" rather than "First Paper" and that instead of listing a number of types of civil actions in the second and third lines of the section, the language should simply read "all civil actions except probate cases". IT was also suggested that the language of 2-7(b)(3) be clarified to make it clear what kinds of filings are covered by this section and that 2-7(b)(4) should not be included with "First Papers" since a motion need not be a first paper, so it should be a separate category.

With regard to Section 22A:1-1.1(a), Chairman Gagliardi asked about the point of paying \$5 daily to each juror and directed Ms. Tharney to obtain additional information about this item. Commissioner Pressler suggested that the language in 1-1.1(b) be changed to say that jurors would be paid \$35 per day for any day in excess of two days, rather than three.

It was also suggested that in Section 2-7(e), the fees for the county clerk should be separated from the fees for the clerk of the Superior Court.

## Title 39

Ms. Tharney briefly reviewed the categorization efforts to this time, and summarized some of the comments she has received from officers. With regard to the issue of Class C, and the range of the offenses included in that Class, Professor Bell said that such a problem should not necessarily deter the Commission from categorizing the penalties, and that, if it is viewed as a significant problem, the class could be split into two smaller classes. The Commission determined that, in response to the comments received, the following changes would be made to the classification of certain items:

### Class A

3-10.8	moved to Class C
3-19.1	already changed by the Legislature to Class C, so no action needed
3-54.13	already changed by the Legislature to Class B, so no action needed
3-54.14	move to Class B
3-54.20	move to Class B
3-76.2j	leave in Class A
3-35	move to Class B
3-38	move to Class B
3A-1 and 3A-2	clarify to address new technology and reconsider
4-49	leave in A
4-209	leave in A
4-128	leave in A
5-35	move to Class B

### Class B

3-13.8	move to Class C
3-19.1	already changed by the Legislature to Class C, so no action needed
3-33	leave in Class B (but subsequent penalty should be Class C)
3-54.13	move to Class C
3-54.20	move to Class C
3-54.14	move to Class C
3-75.3	leave in Class B
3-38	move to Class C
4-130	separate personal injury from property damage; move personal injury offense to Class D
4-49.1	move to Class C

4-54	move to Class C
4-52 and	
5C-1	move to Class D
5-30	change language to reflect “willful” failure; move to Class D

The Commission will complete its review of the offenses at the next meeting.

### **Poor Law / Public Assistance Law**

Judith Ungar reported that Mr. Cannel and she had met on June 19th with officials from the Department of Family Development, had gone through the complete draft with them and had proposed four dates in July when they could meet again with the Department.

### **Miscellaneous**

Chairman Gagliardi read a letter addressed to the Commissioners from Ms. Ungar announcing her retirement following the July meeting. Members of the Commission roundly praised Ms. Ungar and wished her well in retirement.

The next meeting is scheduled for July 19, 2007.