

## **MINUTES OF COMMISSION MEETING**

**July 18, 2019**

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 O. Bunn; Commissioner Virginia Long (via telephone); Commissioner Louis N. Rainone; Professor John K. Cornwell (via telephone), of Seton Hall University School of Law, attending on behalf of Commissioner Kathleen M. Boozang; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; and Grace Bertone, Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

### **Minutes**

Chairman Gagliardi asked that the Minutes from the June 20, 2019 meeting be amended to indicate that the recommendations regarding the “Definition of Widow” reflected the consensus of the Commission. On the motion of Commissioner Bunn, seconded by Commissioner Rainone, the Minutes from the June 20, 2019 meeting of the Commission were unanimously approved with the modification requested by Chairman Gagliardi.

### **Standard form Contract**

John Cannel began the discussion of his Revised Draft Final Report by noting that the original version of the Report was released approximately 20 years ago. Mr. Cannel noted that if no action is taken relative to the Report, then the original 20-year-old Report will continue will remain the Commission’s position on this subject. Mr. Cannel explained that this updated Report makes important, consumer-protective changes, such as heightened unconscionability terms and refined primary terms. The proposed revisions also move the law towards the regularization that the American Law Institute (ALI) recommended in their proposed Restatement on this subject matter. He noted, however, that the Report deals with subjects not addressed by the common law, such as the primacy of computer communication over written communication.

Commissioner Bell sought clarification on whether the Commission’s previous Report could be revoked until the Commission has something with which everyone is satisfied. In response to this inquiry, Mr. Cannel answered that the Commission has the authority to revoke a prior Report. Commissioner Bunn inquired whether the previous Report has been considered by the Legislature. Mr. Cannel advised that the prior Report formed the basis of a bill introduced during the current legislative session. Laura Tharney indicated that the Legislature has, as a courtesy, refrained from further work on this bill pending the ongoing work of the Commission.

Prior to entertaining any comments from the public, Commissioner Long advised Chairman Gagliardi that she serves on the Board of Legal Services and has voluntarily recused

herself from any participation in this matter. Chairman Gagliardi then invited comments from the public.

David McMillin, the Director of Legal Services of New Jersey, stated that the modifications proposed by this Commission are troubling. He said that this Report proposes to repeal, and perhaps in some limited way replace, the doctrine of unconscionability. Mr. McMillin further noted that the Report would divide contracts into two categories - primary and secondary terms - and remove the concept of unconscionability from primary terms. He stated that a different kind of analysis could be done and referred the Commission to Jacob Hale Russell's article on unconscionability. Mr. McMillin requested that the Commission not move forward until the project is further edited.

Jon Romberg, a professor at Seton Hall Law School, advised that he became aware of this project only two days before this meeting. Prior to the meeting, however, Professor Romberg submitted written comments to the Commission, and he stated that both he and some of his co-workers at Seton Hall, including Dean Sullivan, strongly opposed the Commission's proposal. It was Professor Romberg's understanding that the Report deals with the issues considered by the ALI but said that it does so poorly and in a starkly pro-business fashion. Professor Romberg had several concerns about the Commission's Report.

Professor Romberg said that, if approved, this Report would limit a litigant's choice of jurisdiction. He disagreed with the Report's treatment of primary terms, noting that just because a term is "primary" does not mean it should not be subject to an unconscionability analysis. He voiced concern regarding the issue of negotiating over a term of a contract, and stated that this too should not negate an unconscionability analysis. He contended that the Commission proposal eliminates many other defenses currently available, including things like fraud and misrepresentation. Additionally, he said that the treatment of secondary terms does not protect the average consumer nearly enough and could permit businesses to target certain consumers. Professor Romberg advised the Commission that this Report does not retain the present concept of unconscionability but instead defines a term and calls it unconscionability, fundamentally changing the law. Moreover, he took issue with the Report's handling of attorney's fees, contending that it gives attorneys leverage. Professor Romberg stated that while some parts of the Report are beneficial, it should not go forward.

Commissioner Bell explained that unconscionability is divided into a procedural standard and a substantive standard. He asked Professor Romberg whether there was any reason to reinstate the procedural aspect. Professor Romberg stated that he did not think it would be necessary to do so and noted that he was more concerned with people not being able to afford attorneys.

Margaret Jurow, a "Resident Practitioner" at Seton Hall who maintains a private practice in this area of the law, also addressed the Commission. From her practical perspective, she observed that the current model of unconscionability and equitable defenses works well. She stated

that most unconscionability clients are elderly, otherwise vulnerable, or stressed and under pressure, and that under the current law, their cases are not causing problems in the system. Ms. Jurow also took issue with several aspects of the Report. She found the handling of attorney's fees troubling and noted that the unconscionability cases that are litigated traditionally focused on primary terms of the contract. Ultimately, Ms. Jurow requested that this Report be abandoned, and that the previously issued Final Report be revoked.

Mr. Cannel briefly addressed the price aspect of the Report, noting that while it is an important issue, this Report only considers the initial disclosed price a primary term. Additionally, Mr. Cannel said that while the issue of impossibility in an unconscionability analysis did not come up, it could be added for the sake of completeness. In his opinion, the Report should be approved to change the law to keep up with modern times and transactional realities.

Chairman Gagliardi explained that the Commission has a wide variety of options and asked the Commission to consider if it wants to attempt to improve this Report or draft something new. Commissioner Bunn noted that concern has been expressed about the distinction between primary and secondary terms and asked whether greater clarity could be achieved. Mr. Cannel noted that Professor Russell's expressed concern about the fact that in this Report certain price terms do not constitute primary terms. Here, Mr. Cannel stated, the issue was inconsistency. Commissioner Bell suggested that the Commission further continue to study the issue of unconscionability. Commissioner Bell added that that a proposal regarding attorneys' fees should be drafted for the Commission's consideration.

It was the consensus of the Commission that Staff revise and redraft the Report to present in October.

### **Definition of "Widow"**

John Cannel presented a Draft Tentative Report proposing a definition of the meaning of "widow" in N.J.S. 54:4-3.30, which provides a property tax exemption to certain widows of deceased veterans. The Exemption Statute of 1948 provided for a total property tax exemption for veterans who were declared permanently disabled as a result of their military service. This exemption was subsequently extended to a deceased veteran's widow in certain circumstances. Currently, the statute's definition of widow does not address whether a veteran's widow who remarries and is later widowed again is considered a widow under the statute, or whether widowhood ceases permanently upon a remarriage.

Prior to the meeting, Staff was advised by Commissioner Long that the Appellate Division of the Superior Court of New Jersey heard the appeal in the matter of *Pruent-Stevens v. Township of Toms River*. The Appellate Division addressed a widow's eligibility for the veteran's property tax exemption under N.J.S.A. 54:4-3.30. In reversing the decision of the Tax Court, the Appellate Division held that once a widow, or widower, remarries, that individual permanently loses his or her eligibility for the disabled veteran's property tax exemption. Mr. Cannel also that he had taken

the opportunity to speak with *Pruent-Stevens*' attorney. Counsel advised Mr. Cannel that the New Jersey Supreme Court denied certification in this matter on July 17, 2019.

Commissioner Long stated that it was her belief that the Appellate Division reached the correct decision concerning the exemption. All of the Commissioners agreed and chose to conclude this project without a recommendation by the Commission.

### **Local Lands and Building Laws - Bidding**

Samuel Silver presented a Memorandum proposing a project to repeal N.J.S. 40A:12-24 which does not require a governmental unit to seek public bids before leasing public property, not needed for public use, to a private person; and, is also inconsistent with the public bidding requirements found in both N.J.S. 40A:12-14 and the Local Public Contracts Law (N.J.S. 40A:11-1 et seq.).

Mr. Silver explained that this project was brought to Staff's attention by a municipal land use attorney who contacted the Commission. The practitioner advised Staff that after he and his colleagues reviewed the Local Lands and Buildings Law ("LLBL"), they noticed that the LLBL contains two separate statutes that each permit a governmental unit to lease, to private persons, public property "not needed for public use." The attorney suggested that the two statutes, N.J.S. 40A:12-14 and N.J.S. 40A:12-24, are not consistent with one another regarding the leasing of real property and the necessity for compliance with the Local Public Contracts Law ("LPCL").

N.J.S. 40A:12-14 is the first statutory section in the LLBL that addresses the leasing of county or municipal real property to a person. At the time of its enactment, this statute was deemed by the Legislature to be a "new provision" because it did not originate from any prior statute. This statute was one of the first statutes to mandate public bidding when a governmental unit proposed to lease its property to a private person.

Within the LLBL, there is a second statute regarding the lease of public lands for private purpose. This statute, N.J.S. 40A:12-24, sets forth a governmental unit's authority to rent lands and buildings not needed for public use. The origin of this statute can be traced to R.S. 40:60-42, which in turn had its origins in the Home Rule Act of 1917. Conspicuously absent from this statute, however, is any express language that requires the governmental unit to engage in the public bidding process.

The confusion created by having two different statutes dealing with the same subject matter in two different ways could eventually lead to litigation on this subject. In *Sellitto v. Borough of Spring Lake Heights*, the plaintiff sought to restrain the governmental unit from leasing land to a cell telephone communications facility. The municipality contested that section 24 of the LLBL permits the governmental unit to dispense with the public bidding process. The plaintiff appealed the trial court's denial of injunctive relief.

The Appellate Division, in *Sellitto*, was called upon to determine whether section 14 or section 24 controls the disposition of public property not needed for public use. In the absence of any legislative history the court struggled to find a rationale for 2 contradictory sections in the same Act. The Court turned its attention to the LPCL to assist in the interpretation of the statutes in question.

The LPCL was enacted to foster openness in local government, secure competition in the marketplace, and protect against chicanery and fraud in public office through the process of competitive bidding, which would offer the best monetary result for the public entity and ultimately the taxpayer. After reviewing the New Jersey Supreme Court decision of *Wasserman v. Middletown Twp.*, the *Sellitto* Court found that they could not ascertain what purpose section 24 of the LLBL serves. The Court held that section 14 prevails over section 24 because to hold otherwise would eliminate the public bidding requirements set forth in the Act.

Commissioner Long said that an additional examination of the language contained in section 24 should be undertaken before recommending its repeal. Commissioner Bunn stated that the Commission should undertake the project because there is a conflict between the two statutes. Commissioner Rainone suggested that maybe Staff can cross- reference section 14 in section 24. Staff was authorized by the Commission to engage in additional research and outreach on this project.

### **Notice by Publication**

Arshiya Fyazi presented a Memorandum proposing a project to modify the “Municipal Notice by Publication” statutes. Ms. Fyazi began by confirming that this project does not contemplate any “anti-newspaper” sentiment. Rather, the proposed project is intended to clarify and modernize the municipal notice statutes. The goal of the project, according to Ms. Fyazi would be to create uniform language among the notice by publication statutes and to address the circumstances of municipalities without a print newspaper in their vicinage.

Currently, N.J.S. 40:53-1 permits municipalities to designate an official newspaper for the publication of legal notices. The purpose of this and similar statutes, is to notify the largest number of people who may be affected by the proposed municipal action. According to Ms. Fyazi, there is no uniform method of providing notice by publication for municipal action. Several statutes, N.J.S. 40:49-2(a) and (d), N.J.S. 40A:12A-6 and N.J.S. 35:1-2.2 each set forth a different requirement for the publication of municipal notices.

Municipal Notice by Publication statutes mandate that a newspaper in which a notice may appear must be published and circulated either within the municipality, or in the county in which the municipality is located. Ms. Fyazi noted that the statutes’ intent is to notify the largest number of people regarding municipal action. The central issue becomes how to comply with this statutory requirement in the absence of a local newspaper. By way of example, Ms. Fyazi observed that the

Township of East Brunswick is one of many municipalities whose official newspaper is no longer printed in Middlesex County. The lack of statutory clarity could ultimately lead to litigation.

Commissioner Rainone commented that he brought this issue to the attention of the New Jersey Law Revision Commission after becoming involved in litigation to defend the Township of East Brunswick over its failure to publish an ordinance and a resolution in accordance with the statute. East Brunswick, according to Commissioner Rainone, is one of several municipalities affected by the absence of a newspaper that is printed within the County or in an adjoining county. After laboriously consulting the municipal publication statutes, Commissioner Rainone arrived at the conclusion that it is “impossible” for any municipality in Middlesex County to comply with the publication statutes. If these municipal actions were to be considered “void” by the judiciary then the greater problem would be that no municipality could act by ordinance or resolution.

Commissioner Rainone also explained that any decision regarding statutory amendment should address the concept of “publication.” Historically, he explained, publication meant the actual location where the newspaper was printed and circulated to the public. With the advent of the computer, newspapers can be printed anywhere. The statutes, according to Commissioner Rainone should be modernized to reflect how newspapers are currently published. Commissioner Rainone then recommended updating the statute to allow municipalities to comply with the notice provisions.

Chairman Gagliardi stated that it is critical to frame the issue involving the notice by publication statutes. Historically, according to the Chairman, the Legislature has debated whether print publications are the proper place for public notices. The medium in which these notices are to appear, however, is not something that the Commission will consider. The Chairman stated that he can appreciate the need to define what “publication” means given the number of public entities that cannot comply with the publication statutes. The Chairman opened the meeting to members of the public who wished to be heard on this topic.

Thomas J. Cafferty, a Director at Gibbons Law Firm, informed the Commission that he represents the New Jersey Press Association. Richard Veza, an officer in the New Jersey Press Association and the publisher of the Star Ledger, was also in attendance.

Mr. Cafferty was asked by Chairman Gagliardi whether substituting a different concept for publication, such as “circulation”, would alleviate or intensify the current statutory problem. Mr. Cafferty noted that the two statutes discussed in the instant Memorandum fix eligibility for carrying “official” ads and that the type of ad determines where and with what frequency it must be published. Eligibility, according to Mr. Cafferty, rests on three factors: where a newspaper is printed; where it is published; and, the location of its publication office. Mr. Cafferty explained that the publication office serves as the newspaper’s nerve center and is not necessarily the same as where it is put into circulation. Mr. Cafferty also informed the Commission that there is a large body of well-developed case law regarding notice by publication. Thus, any change would not be

as simple as amending a particular provision in a given statute. Mr. Cafferty offered to work with the Commission and provide any assistance with this project as it moved forward.

Commissioner Rainone observed that the last sentence of N.J.S. 40:53-2, provides that "...if there be no such newspaper, then in at least one newspaper published in the county in which the municipality is located and circulating in the municipality." He questioned whether the fix is as simple as amending the statute to read "located **or** circulated" in the municipality. Mr. Cafferty noted that N.J.S. 40:53-2 deals with a municipality publishing legal ads elsewhere and noted that this does not serve local citizens. He also explained that any potential change would not be as easy as replacing "and" with "or" in the statute. According to Mr. Cafferty, the statutes have been changed as newspapers moved, and any change must be consistent across similar provisions. Mr. Cafferty stated that he has not heard of any problems complying with these statutes, and in any case, advertisements are uploaded to the internet after being published in newspapers.

Mr. Cafferty informed the Commission that the New Jersey Press Association would be willing to provide Staff with a list that sets forth the location of current newspaper offices. Commissioner Bunn asked whether the problem is specific to office location. Mr. Cafferty stated that if that is an issue, he would be happy to assist in drafting to remedy this problem. He also pointed out that publication in weekly periodicals might provide an option to the notice requirements.

Chairman Gagliardi pointed out that first, the Commission should understand the magnitude of the problem. This, he continued, should begin with an analysis of the statutes. If there is a statute that is no longer viable, then the Commission should modify that statute, or statutes. Commissioner Bunn concurred and noted that given the numerous types of official advertisements, this project may present the opportunity to bring uniformity to these statutes. Mr. Cafferty explained that there are many types of ads, many types of audiences, and that the publication requirements in various statutes may differ. Commissioner Rainone pointed out that often a large problem can be solved with an amendment, or a catchall phrase. He suggested that Staff should further examine N.J.S. 35:1-2.2 as a possible location for such a remedy.

Richard Vezza, the Publisher of the Star Ledger and a Director of the New Jersey Press Association, thanked the Commission for the opportunity to provide his comments on this topic. He asked the commission to take note that New Jersey has 17 daily newspapers and 90 weekly newspapers. In addition, he noted that no newspaper has closed in the past 25-30 years; rather, newspapers have consolidated their offices and relinquished unnecessary real estate holdings. Finally, Mr. Vezza reiterated the offer made by Mr. Cafferty to work with staff to come up with a solution to the publication problem that makes sense.

Steve Lenox, the owner, publisher, and editor of "TapInto Paterson" in Passaic County took the opportunity to thank the Commission for providing him with time to comment on this subject matter. He informed the Commission that "TapInto" is a series of online, local news

sources. Mr. Lenox stated that on-line media should be allowed to participate in the public notification process. In addition, he observed that the critical consideration should not be where a newspaper is published but how people receive their news.

Chairman Gagliardi noted that policy determinations, such as the one raised by Mr. Lenox, are within the exclusive province of the Legislature. Mr. Lenox continued, stating that online sources serve a large audience and are growing both in the number of towns and the number of people they serve. The question, according to Mr. Lenox, is not one of online versus print, rather, a statutory provision that provides for both. He also pointed out that notices can appear not just in an online newspaper but in online versions of print newspapers. This would meet the statutory requirement and provide an opportunity to get the message out. He concluded by stating that he would like to participate in this project.

Chairman Gagliardi then recognized Robert Rakossay, the owner, publisher and editor of “TapInto East Brunswick.” He confirmed that he did not wish to dwell on whether publication should occur online as opposed to a print medium. Rather, he viewed this current development as an opportunity to participate in the process to offer multiple options to municipalities to transmit their messages to the public.

Staff was authorized to conduct further research and focus on gathering additional information on this subject matter consistent with the discussion of the Commission.

### **Modification of Unemployment Compensation Law**

Elizabeth Brown, a Legislative Law Clerk, discussed with the Commission a Memorandum proposing a project to clarify whether the 2015 amendment to N.J.S. 43:21-5(a) applies retroactively to cases in which plaintiffs do not receive unemployment benefits after leaving a job for medical reasons as discussed in *Ardan v. Board of Review*.

N.J.S. 43:21-5(a) provides that a person is disqualified from receiving benefits where they leave work voluntarily without good cause attributable to the work, until after they work eight weeks once they are reemployed and earn at least ten times their weekly benefit rate.

The plaintiff in *Ardan v. Board of Review* left her job as a nurse at a medical center for a new, less physically demanding, vocation. When she resigned from her first job, she did not advise her employer that her departure was a result of her chronic pain. Upon completion of her work with her new employer, her claim for unemployment benefits was denied because her reason for leaving her first job did not constitute “good cause.” In addition, at the time of her application she had not earned ten times her weekly benefit for eight weeks. The Plaintiff unsuccessfully appealed to both the Board of Review and the Appellate Division.

Three years after her application was initially filed, a regulation was enacted that would allow the Plaintiff to receive unemployment benefits. Ms. Brown stated that N.J.A.C. 12:17-9.3(b)



provides that any individual who voluntarily leaves work with one employer to accept other employment that starts no more than seven days after the person leaves the first job, if the second job has hours or pay not less than that of the first job. In a 4-3 decision, the Supreme court held that the statute did not apply retroactively.

Ms. Brown observed that the dissent said that the language of the amendment indicated that it was to be applied retroactively. She further observed that the dissent considered the amendment to be curative as it was meant to address situations in which claimants were being unfairly denied benefits.

Commissioner Long commented that retroactivity is a very difficult issue to address. Commissioner Bunn added that given the timeframe set forth in the statute, this issue presented a short-term problem. Commissioner Rainone stated that the issue of retroactivity always involves a policy decision. He continued by noting that this issue implicates claims that are to be paid by small employers. In deciding an issue of this magnitude there is a cost that requires analysis that he believed extended beyond the authorization of the Commission. Commissioner Long concurred that this was not a project that the Commission should undertake at this time.

After concluding the discussion of this project, the Commissioners agreed not to undertake a project in this area.

### **Juvenile Detention**

Ryan Schimmel, a Legislative Intern, presented a Memorandum to the Commission which discussed a project to modify the Juvenile Justice Code in response to the constitutional infirmities raised by the New Jersey Appellate Division in *State in the Interest of T.C.*

In *State in the Interest of T.C.* the Appellate Division considered the constitutionality of subjecting some developmentally disabled juveniles to short term, post-adjudication, incarceration, while other similarly situated juveniles were being released from custody simply based upon the county in which they had committed their crimes. The defendant said that the law did not allow a developmentally disabled juvenile to be incarcerated in either a state or county facility. The State, however, maintained that while the statute prohibited the detention of developmentally disabled juveniles in State facilities, it did not prohibit their incarceration in certified, short-term, county detention programs.

Pursuant to N.J.S. 2A:4A-43(c), a juvenile may be detained in a county in which there is a facility that meets the requirements of the Juvenile Justice Commission. A county without access to an approved facility may incarcerate a juvenile in a State facility pursuant to N.J.S. 2A:4A-43(f). N.J.S. 2A:4A-44(c) prohibits the State from committing a juvenile to a State facility.

The Court observed that a juvenile who is developmentally disabled and is adjudicated delinquent in a county with an approved facility is at risk of post-judgment adjudication.

Conversely, a developmentally disabled juvenile who is adjudicated in a county without an approved facility cannot be incarcerated. The juvenile with a developmental disability in *T.C.* was adjudicated in Ocean County and sentenced to a period of incarceration. If, however, he had been adjudicated delinquent in any of New Jersey's nine counties without an approved facility, he would not have been incarcerated.

The Court concluded that a plain reading of the Juvenile Justice Code violated New Jersey's constitutional guarantee of equal protection. The Court in *T.C.* held that juveniles with developmental disabilities may not be held in county detention facilities as long as there was no certified, short-term incarceration program in every county.

Chairman Gagliardi asked Mr. Schimmel whether there is any pending legislation in this area of law. He replied that there are currently six pending bills that seek to modify N.J.S. 2A:4A-43. Mr. Schimmel added that none of the pending legislation addresses the issue presented to the Appellate Division in *State in the Interest of T.C.*

Commissioner Long inquired whether one bill takes out section f. of N.J.S. 2A:4A-43. She questioned whether the removal of this section would eliminate the problem presented herein. Laura Tharney commented that the removal of this section may not clearly address the issues that are presented in the Memorandum. Commissioner Bell opined that the elimination of section f. does not remedy the equal protection problem. In its current state, the incarceration of an entire class of juveniles cannot be effectuated. Commissioner Bell concluded that the statute should either be fixed or repealed.

After noting that this was a worthwhile project, Commissioner Bunn questioned whether the approach to this issue should involve an examination of the pending legislation to determine whether any of the bills remedy the unconstitutional aspect discussed by the Court in *T.C.* Commissioners Long and Bertone concurred with Commissioner Bunn's approach. Commissioner Bell suggested that Staff should also consult with individuals who have specific expertise in the area of juvenile detention to resolve this issue.

It was the consensus of the Commission that Staff review the pending legislation and provided the Commission with an analysis of each bill at a future meeting.

### **Juvenile Megan's Law Offenders**

Myla Wailoo, a Legislative Intern, discussed with the Commission a Memorandum concerning Juvenile Megan's Law Offenders and a potential modification to N.J.S. 2C:7-2, to address the constitutionality of barring certain sex-offending adjudicated delinquents from relief of permanent registration requirements. The project arose from the New Jersey Supreme Court's decision in *State in Interest of C.K.*, 233 N.J. 44 (2018) in which the Court held the lifetime

registration requirement to be unconstitutional because it violated New Jersey's guarantee of substantive due process.

At approximately 15 years old, C.K. began sexually abusing his adopted younger brother, A.K., who was seven at the time. After A.K. turned 16, he disclosed the abuse to a priest and then to the police. At 23, C.K. was charged with aggravated sexual assault, committed while he was a juvenile. C.K. pled guilty in Juvenile Court. The State classified C.K. as a Tier One offender, the lowest risk category for re-offense.

As part of his sentence C.K. had to comply with Megan's Law, which required annual registration with local authorities as a sex offender. He also was prohibited from working with children without a court's permission. At the time of his arrest, C.K. was working as a teacher's assistant in a classroom for children with autism. After his juvenile adjudication he stopped working with children. In the years following, C.K. declined opportunities for professional advancement, fearing that a background check would reveal his status as a Megan's Law registrant. At the time of the opinion, it had been more than 20 years since C.K. engaged in unlawful conduct, and more than 14 years since his juvenile adjudication.

Five years after his juvenile adjudication C.K. filed his first petition for post-conviction relief (PCR). In his petition, he sought a judicial declaration that the lifetime registration and notification requirements set forth in Megan's Law violated his constitutional rights. The PCR court denied the petition in its entirety and the Appellate Division affirmed, suggesting that an evidentiary record was needed to support his constitutional arguments. Four years later, C.K. filed a second PCR petition. The second PCR court held an evidentiary hearing during which expert witnesses asserted that juvenile sex offenders are fundamentally different from adult offenders and are more amendable to rehabilitation and less likely to reoffend. Experts also testified that, at various psychological evaluations, C.K. presented a low risk to reoffend. The PCR court found the evidence to be credible, but concluded that any changes to the requirements of Megan's Law must come from the Supreme Court.

In reviewing this matter, the New Jersey Supreme Court considered whether the categorical lifetime registration and notification requirements imposed on juvenile offenders pursuant to N.J.S. 2C:7-2(g) remains valid when considered under the substantive due process guarantee of the New Jersey State Constitution. The Court held that every person is entitled to due process of law and that this guarantee required that a statute reasonably relate to a legitimate legislative purpose and not impose arbitrary or discriminatory burdens on a class of individuals. The Court ultimately found N.J.S. 2C:7-2(g) unconstitutional.

Commissioner Bunn stated that based upon the disposition of this case, there is very little that the Commission can do with this statute. Chairman Gagliardi observed that the Supreme Court has chosen to narrow the scope of Megan's Law. Commissioner Bell commented that the Commission has an obligation to propose something to the Legislature to allow the statute to have

effect. Commissioner Rainone stated that any discussion of the time frames involved pursuant to the Megan's Law statutes requires input from individuals who have studied juvenile recidivism rates. Commissioner Cornwell observed that a recommendation concerning a "time frame" that should be set forth in a statute requires extensive studies. Chairman Gagliardi stated that this appears to be a problem that must be fixed, but that this problem is beyond the scope of the Commission. Commissioner Long concurred with Chairman Gagliardi's observation.

After concluding the discussion, the Commissioners unanimously agreed not to undertake a project in this area.

### **Parsonage Exemption**

Benjamin Cooper, a Legislative Intern, discussed with the Commission a Memorandum proposing the modification of N.J.S. 54:3-6 to create a statutory definition of the term "officiating clergyman" in order to create clarity in what is commonly referred to as the "parsonage exemption."

In *Clover Hill Reformed Church v. Twp. of Hillsborough*, the New Jersey Tax Court considered whether a parsonage residence qualified for exemption from local property taxes when it was occupied by their "Minister of Music." Clover Hill Reformed Church had created this position for the individual responsible for training the choir, selecting the hymns, and all the musical aspects of the religious service. He also noted that the Minister of Music, in *Clover Hill*, did not attend the seminary, was not ordained, and was not a congregant of the church.

The local tax assessor denied Clover Hill's request for a tax exemption. The church subsequently filed an appeal with the Somerset County Board of Taxation. This request was dismissed without prejudice and Clover Hill appealed.

The Tax Court observed that N.J.S. 54:3-6 provides an exemption for up to two buildings that are occupied by officiating clergymen. The term "officiating clergyman" is not defined in N.J.S. 54:3-6. Thus, to receive the exemption, a church must meet five statutory requirements. According to the Tax Court, the Clover Hill Church met four of the criteria necessary to receive the parsonage exemption.

The Court determined that whether to grant the parsonage exemption centered around whether an individual is an "officiant" within the religious organization. This required a court to examine the services that an individual performs, not his or her title or status. Despite not meeting every statutory criterion, the Court found that the Minister of Music played an important role in the congregation and utilized his training as part of his job function. Therefore, the Minister of Music was to be considered an "officiating clergyman" and the parsonage exemption was to be granted to the Clover Hill Reformed Church.

Mr. Cooper advised the Commission that there are currently 15 bills pending in the New Jersey Legislature. Each of these bills seek to modify N.J.S. 54:4-2.6, but none of them seeks to define the term “officiating clergyman.”

Commissioner Bell observed that the key term in the statute is “the” officiating clergyman. Commissioner Bunn opined that churches frequently have more than one member of the clergy who may reside on church premises. Whether to grant the parsonage exemption, he continued, is traditionally the focus of the tax assessor. Generally, tax exemptions are construed against granting the exemption. Nevertheless, he recommended that the Commission not engage in any work to modify the current statute. Commissioner Rainone expressed a concern about drafting a definition that would pass constitutional muster. Commissioner Long added that the absence of a definition for the term “officiating clergyman” is not a problem.

It was the consensus of the Commission to forego further work in this area.

### **Miscellaneous**

Ms. Tharney informed the Commission that work had commenced to upgrade the NJLRC computer systems in order to bring the operating system up to date. In addition, she advised the Commission that the new NJLRC website has been completed and will be launched the week of July 22, 2019.

### **Adjournment**

The meeting was adjourned on the motion of Commissioner Bell, which was seconded by Commissioner Cornwell.

The next Commission meeting is scheduled to be held on September 19, 2019, at 4:30 p.m. at the Newark campus of the Rutgers University, School of Law.