MINUTES OF COMMISSION MEETING

July 21, 2022

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor John K. Cornwell, of Seton Hall University School of Law, attending on behalf of Commissioner Kathleen M. Boozang; Professor Bernard W. Bell, of Rutgers University School of Law, attending on behalf of Commissioner Rose Cuison-Villazor; and Grace Bertone, attending on behalf of Commissioner Kimberly Mutcherson.

In Attendance

Lisa Chapland, Esq., the Senior Managing Director of Government Affairs for the New Jersey State Bar Association (NJSBA), was in attendance.

Minutes

The Minutes of the June 16, 2022, meeting were unanimously approved by the Commission, on the motion of Commissioner Bell, seconded by Commissioner Rainone.

Autobus

Samuel Silver discussed with the Commission a Draft Tentative Report proposing modifications to N.J.S. 54:39-112(a)(1) and N.J.S. 54:15B-2.1 to clarify the use of the term "autobus" as discussed in *Senior Citizens United Community Services, Inc. v. Director, Division of Taxation*, 32 N.J. Tax 381 (2021). The issue before the Court was whether the definition of the term autobus, as set forth in the Public Utilities statutes in Title 48, has been incorporated into the statutes regarding taxation, thereby excluding certain types of bus service from fuel tax exemptions.

Both the Petroleum Products Gross Receipts Tax Act and the Motor Fuel Tax Act contain provisions to exempt specific bus services from the tax on fuel. Mr. Silver noted that the exemption language of both acts is identical. The sentence governing the exemption, and the subject of the controversy in *Senior Citizens United*, is 112 words long and contains ten conjunctions – three uses of the word "while", three uses of the word "and", and four uses of the word "or." The issue presented an intersection of tax and public utilities regulation that necessitated the Court's examination of the statute's plain language and evolution from the 1920s through the early 1990s.

Mr. Silver stated that neither the words of the 1992 amendment to the Public Utilities statute excluding paratransit vehicles from the definition of the term autobus, nor the legislative history, indicate an intent that the Public Utilities definition apply to the Motor Fuel Tax exemption. The legislative purpose of the Motor Fuel Tax Act is to relieve counties and third-party providers of the financial expense resulting from Department of Transportation regulations. The

tax court declined to engraft the statutory definition of autobus from Title 48 onto the tax statutes and limit the special rural transportation bus service exemption found in N.J.S. 54:39-112(a)(1). The *Senior Citizens United* Court stated that without the valuable context provided by the legislative history, the statute is not a model of clarity.

Consistent with contemporary legislative drafting practices, the proposed statutory modifications divide the statute into subsections to improve accessibility. The proposed modifications divide the block paragraph into four sections enumerated (A)-(D). Each subsection contains one of the four "autobus" exemptions – (A) the "jitney" exemption; (B) the "regular route" exemption; (C) the "special or rural transportation" exemption; and (D) the "commuter" bus exemption. Mr. Silver explained that the use of subsections eliminates the ambiguity concerning the nature of the exemption and eliminates the possibility that the Title 48 definition of autobus could be applied to the "special or rural transportation" exemption set forth in subsection (C).

The second sentence of the current version of subsection (a)(1) is eighty-four words long and contains two definitions. The definitions of "commuter bus service" and "regular route service" appear at the end of the substantive language of the statutory subsection. These nested definitions are not easily accessible. The proposed statutory modification separates the definitions from the substance of the statute and from one another. For convenience and clarity, these definitions immediately follow the list of exemptions.

Commissioner Long expressed her support for the structure of the proposed statutory modifications. She noted that subsections (A)-(C) each begin with the word "while." She suggested that the proposed statutory language could be streamlined if the term was added to the introductory clause of subsection (D).

Commissioner Bell suggested that this report be shared with individuals and organizations that provide services to senior citizens. Chairman Gagliardi asked Staff to distribute this report to the tax section of the Attorney General's Office. Mr. Silver stated that Staff will also distribute this Report to Counsel to the Director of Taxation, the New Jersey State Bar Association, private practitioners, and the litigants and counsel for each of the parties.

A motion to release the Report as a Tentative Report, with the modification requested by Commissioner Long, was made by Commissioner Long, seconded by Commissioner Bell, and unanimously approved by the Commission.

Wrongful or Mistaken Imprisonment and NERA

Samuel Silver presented a project addressing the impact of wrongful incarceration on parole pursuant to the No Early Release Act (NERA). Mr. Silver stated that pursuant to N.J.S. 2C:43-7.2, parole supervision for persons convicted of violent crimes begins upon completion of a sentence of incarceration. The statute did not, however, address whether a defendant wrongfully or mistakenly compelled to remain in prison beyond their prescribed sentence should be required to serve the entire period of parole supervision without a remedy.

In *State v. Njango*, 247 N.J. 533 (2021), the New Jersey Supreme Court considered whether the period of parole supervision a defendant was required to serve under NERA should be reduced when the defendant's time in prison exceeded the permissible custodial term authorized by their sentence. The *Njango* Court held that when a defendant is kept in prison beyond their release date, the excess time that is erroneously served must be credited to reduce the period of parole supervision. The Court reasoned that, by reducing the defendant's parole supervision by the excess time that he served in prison, it conformed NERA to the State Constitution in a way that the Legislature likely intended.

Consistent with contemporary legislative drafting practices, the proposed statutory modifications are intended to promote accessibility and eliminate the constitutional deficiency discussed by the Court in *Njango*. The proposed modifications in subsection c.(2)(B) are based upon the language employed by the *Njango* Court. Mr. Silver stated that explicit references to individuals who have been erroneously detained permeate the opinion, and the language selected for the proposed modification is narrowly tailored to follow the holding of the Court and the direction of the Commission.

Commissioner Long noted the language of the Supreme Court, specifically the use of the terms "wrongful and mistaken," has been incorporated into the proposed language. Although *Njango* dealt with an individual who had been wrongfully or mistakenly incarcerated, she wondered whether there were scenarios where an individual might be kept beyond a mandatory prison release date for some other reason that would not necessarily meet the standard of wrongful or mistaken. Commissioner Long posited a hypothetical in which an individual was held beyond their release date because an appropriate halfway house was not available, or the defendant had COVID-19. She noted that if the goal of modifying the statute was to provide a day-for-day credit to individuals held in prison beyond their term of incarceration then whether the excess time in prison was wrongful or mistaken should not factor into the analysis.

Mr. Silver explained that the proposed language was drafted as narrowly as possible to conform to the language of the *Njango* Court so as not to broaden the holding, but that the language could be modified subject to the Commission's direction on the issue. He noted that Staff discussed, in-house, the issue raised by Commissioner Long. Staff considered whether the elimination of the wrongful or mistaken standard might broaden the statute beyond what the Supreme Court intended. For instance, the statute might then be expanded to cover an individual who refused to fill out the paperwork necessary for their release.

Commissioner Long proposed using "through no fault of his own" as an alternative standard, which would address the possibility of broadening the statute beyond what was intended by the *Njango* Court. Commissioner Bell agreed with this approach, but then asked how the statute would address a situation where an individual made an error when filing papers to overturn his conviction and the delay in obtaining relief resulted in excess prison time. In that circumstance, the error, and therefore the excess time in prison, was arguably the fault of the individual.

Chairman Gagliardi opined that the various possible scenarios should be considered once the Commission has gotten some feedback on the proposed language. He pointed out that, from a

policy standpoint, the changes being discussed by the Commission were persuasive, but questioned whether it was appropriate to propose language that potentially goes beyond what the Court held in *Njango*.

Commissioner Cornwell added that expanding the language along the lines being discussed could potentially apply to a large range of unexpected situations. For instance, he pointed out that those classified as sex offenders are routinely held beyond their release date because of issues finding appropriate housing. Commissioner Bell stated that issues like that would likely be raised by commenters, and therefore the next step might be to solicit feedback on the current language and then address the issues and problems raised by knowledgeable commenters. Commissioner Cornwell agreed with this approach.

Chairman Gagliardi asked that Staff modify the Report to set forth the Commission's discussion of individuals who are held in prison beyond the permissible custodial term authorized by their sentence through no fault of their own. After Staff has conducted its outreach to interested individuals and organizations, the Commission will then consider the substance of the project, the proposed language, and its scope.

Subject to the proposed modification, Commissioner Bertone made a motion to release the Report as a Tentative Report, seconded by Commissioner Bell, and unanimously approved by the Commission.

Statute of Limitations for DNA Evidence

Mara Pohl, a Legislative Law Clerk with the Commission, discussed a project to clarify when the statute of limitations begins to run in cases involving DNA evidence pursuant to N.J.S. 2C:1-6(c). This issue, discussed by the New Jersey Supreme Court in *State v. Thompson*, 250 N.J. 556 (2022), was brought to Staff's attention by Commissioner Bell.

In *Thompson*, the Court determined that the statute of limitations in cases involving DNA evidence begins when the State possesses both the physical evidence from the crime scene and the DNA sample from the defendant, not when a match between the two is made. The Court considered whether the State actually has the evidence necessary to establish the identity of the actor if it has in its possession the two requisite pieces of physical evidence, but the technology does not exist to enable the State Laboratory to make a match. The Court stated that the statute of limitations is tolled until the technology has evolved to enable the State to use the evidence it possesses to make a match between the two pieces of evidence. The Court noted that the facts in *Thompson* warranted a discussion beyond its initial holding.

Ms. Pohl stated that in 2001, an assailant's DNA was collected after he perpetrated a sexual assault. Subsequently, parts of the DNA profile, called Specimen 12A, were entered into CODIS, the Federal Bureau of Investigation's (FBI) national DNA database. Parts of the specimen were deliberately not entered into CODIS because they were, at the time, below the analytical threshold. In 2004, the State entered the defendant's DNA profile into CODIS on an unrelated matter. In 2010, the FBI began to allow the type of data that had been excluded from Specimen 12A to be

entered into CODIS. The State, however, did not begin to enter this excluded data into CODIS until 2016. When the New Jersey Lab entered the previously excluded data from Specimen 12A into CODIS it matched the defendant's profile - which had been entered in 2004. The defendant was indicted in May 2017, sixteen years after the attack.

The relevant statute, N.J.S. 2C:1-6(c), provides that in cases involving DNA evidence, the statute of limitations is tolled until the State has both the physical evidence from the crime scene and a DNA sample from an individual that can be compared to the physical evidence to establish the identification of the suspect. The lower courts ruled that the plain language of the statute indicates the statute of limitations begins to run when the State matches the physical evidence from the crime scene and the defendant's DNA. The Supreme Court held that the statute of limitations in cases involving DNA evidence begins when the State possesses both the physical evidence from the crime and the DNA sample from the defendant, not when a match is confirmed. In *Thompson*, the Court found that the statute of limitations began to run in 2010, when the State had in its possession both pieces of relevant evidence *and* the scientific capability to make a match.

The *Thompson* Court noted that while the State had both pieces of physical evidence in 2004, it was unable to analyze the DNA sample from the crime scene until 2010. The Court opined that if the science has yet to be developed or if the method of analysis that would lead to a match has not been officially adopted within the scientific community, then, regardless of whether the State possesses the evidence, the statute of limitations does not start to run.

Ms. Pohl advised the Commission that there are several pending amendments to the relevant statute, though none involves the statute of limitations on DNA evidence.

Commissioner Cornwell stated that this is an important project because recent decisions of the Supreme Court have allowed for broader uses of DNA evidence. Commissioners Long, Bertone, and Rainone concurred with Commissioner Cornwell.

It was the consensus of the Commission to have Staff engage in additional research and outreach on this subject.

Misrepresentation

James Finnegan, a Legislative Law Clerk, discussed a Memorandum proposing a project to clarify the term "misrepresentation" in N.J.S. 54A:9-4, concerning limitations on tax assessment, as discussed in *Malhotra v. Director, Division of Taxation*, 32 N.J. Tax 443 (2021).

The New Jersey statute imposes certain limitations on the Division of Taxation's power to assess taxes. Subsection (c)(4) mandates that when an erroneous refund is issued, an assessment for the deficiency must be issued within three years of the making of the refund. If the refund resulted from fraud or misrepresentation of a material fact, the statute of limitations is extended to five years.

Mr. Finnegan explained that in *Malhotra* the Tax Court considered the meaning of the term "misrepresentation" as used in N.J.S. 54A:9-4. The plaintiffs in that case were taxpayers who had

immigrated to the United States and made a mistake in filing their first tax return. Although both sides agreed that the mistake was an innocent one, the Division argued that even innocent mistakes constitute misrepresentation and therefore trigger the five-year statute of limitations in the statute.

To this time, N.J.S. 54A:9-4 does not define the term misrepresentation. Additionally, neither the statute nor its legislative history provide guidance about the level of intent needed to satisfy the misrepresentation standard. Relying on extrinsic evidence, the *Malhotra* Court determined that to invoke the five-year statute of limitations, "a misrepresentation of material fact must be more than an innocent mistake."

The issue before the Court was whether the term misrepresentation, as used in N.J.S. 54A:9-4, may be satisfied by any mistake or omission, or whether the term requires a deliberate intent. The statute's plain language did not support a determination by the Court of the requisite level of intent. The legislative history of the statute also did not provide guidance regarding the definition of misrepresentation.

Mr. Finnegan explained that, in the absence of other guidance, the Court turned to alternative legal contexts that employ the term "misrepresentation" such as contract law and insurance contracts. Both define misrepresentation as including an element of intent. The Court also considered the definitions of "misrepresentation" and "material misrepresentation" found in Black's Law Dictionary. The Court reasoned that holding that every mistake constitutes misrepresentation would render the distinction between the 5-year and 3-year statute of limitation meaningless, thereby undermining the structure of the statute.

Currently, there is one bill pending that concerns N.J.S. 54A:9-4, but it does not address the definition of the term "misrepresentation" as raised in *Malhotra v. Dir., Div. of Tax'n.*

Commissioner Bell and Commissioner Long both stated that this is an interesting project for the Commission to work on. The Commission authorized further research and outreach on this project.

Household/Incest Exception to Inclusion in Sex Offender Central Registry

Whitney Schlimbach discussed a Memorandum addressing statutory exceptions to Internet registration of individuals convicted of sex offenses in New Jersey. The registration of individuals convicted of sex offenses is governed by N.J.S. 2C:7-13. Ms. Schlimbach stated that subsection (d)(2) of the statute sets forth the household/incest exception to registration if the "sole sex offense" involves an offender who is related to the victim. Ms. Schlimbach explained that in 2004 the Legislature added the definition of "sole sex offense" to N.J.S. 2C:7-13 to address divergent interpretations of the term by courts. The term is defined as an offense involving no more than one victim, no more than one occurrence or, in the case of the household/incest exception members of no more than a single household.

In *In re N.B.*, 222 N.J. 87 (2015) the New Jersey Supreme Court considered whether the household-incest exception was applicable when the registrant and victim were members of a single household but there was more than one incidence of sexual abuse. In *N.B.*, a nineteen-year-

old was indicted on multiple charges related to the sexual abuse of his minor half-sister and pled guilty to one count of sexual contact with her. To avoid being indicted for conduct that occurred while he was a juvenile, the defendant, during his plea colloquy, admitted to multiple offenses against the victim. The defendant argued that he was exempt from internet registration pursuant to the household-incest exception. The Court considered whether the offense must involve "no more than one victim, no more than one occurrence" *and* "members of no more than a single household," to qualify for the exception or if the offense may involve more than one occurrence if it also involved "members of no more than a single household."

The Court held that an offense qualifies under the household/incest exception if it involves no more than one victim, no more than one occurrence, *or* members of a single household. In doing so, Ms. Schlimbach explained, the Court rejected the notion that "none of the statute's three exceptions are available to an offender whose offenses involved more than one victim and one occurrence." The Court determined that the Legislature intended the household-incest exception to be less restrictive than the other two exceptions in subsection (d) of the statute. The Court held that to meet the requirements of the exceptions in either (d)(1) or (d)(3) an offense may not involve more than one victim or more than one occurrence. Pursuant to subsection (d)(2), however, an individual with a single conviction involving multiple occurrences with a single victim is eligible if they are members of a single household. The household/incest exception therefore was applicable to the *N.B.* defendant.

In *State v. H.C.*, 2021 WL 1713300 (N.J. Super. Ct. App. Div. Apr. 30, 2021) the Court applied the holding of *N.B.* to a registrant who pled guilty to one count of fourth degree criminal sexual contact arising from several years of abuse of his niece. During the investigation, the defendant admitted to sexual contact with another niece and nephew. The trial court found that the alleged sexual abuse of the other victims disqualified the defendant from the household-incest exception because his actions amount to more than a "sole sex offense."

The Appellate Division disagreed with the trial court and found that because the defendant was convicted of one offense involving one victim, that constituted a "sole sex offense." The *H.C. Court* characterized the *N.B*. Court's analysis as addressing an ambiguity in the statute arising from the failure to use either the conjunction "and" or an "or" between the phrase "no more than one victim, no more than one occurrence."

Ms. Schlimbach noted that there were currently no pending bills concerning N.J.S. 2C:7-13.

Commissioner Cornwell stated that while the issue here was important, the two court decisions discussed were consistent and interpreted the statute similarly. He inquired whether the proposed project would attempt to create language that was consonant with the court opinions. Ms. Schlimbach agreed that the *N.B.* and *H.C.* holdings were consistent, and that work in this area would be focused on codifying the courts' opinions.

Commissioner Bell stated that the requirements of the household-incest exception as written in the statute and interpreted by the courts were not entirely clear. Commissioner Long

noted that it would be helpful to hear from practitioners in this area of law on this issue, and Chairman Gagliardi agreed. Commissioner Bell stated that because the issue is not clear, the Commission should reach out to interested parties to determine if there is confusion that could be clarified by further work in this area.

The Commission authorized Staff to proceed with additional research and outreach.

Impact of Mail-In Ballots on Election Contest Claims

Whitney Schlimbach discussed a project to clarify that N.J.S. 19:63-26, which prohibits invalidating an election on the basis of errors in the preparation or forwarding of mail-in ballots, operates as a rebuttable presumption when filing an election contest on one of the grounds set forth in N.J.S. 19:29-1, as held by the Appellate Division in *In the Matter of the Election for Atlantic County Freeholder District 3 2020 General Election*, 468 N.J. Super. 341 (App. Div. 2021). The issue before the court was whether a vote-by-mail election may be contested pursuant to N.J.S. 19:29-1 given the prohibition in N.J.S. 19:63-26.

In New Jersey, N.J.S. 19:29-1 sets forth the grounds for contesting an election, including a situation in which the number of legal votes rejected at the polls is sufficient to change the result of an election. The Vote By Mail Law, N.J.S. 19:63-26, directs that an election "shall not" be held invalid due to irregularities or failures in the preparation or forwarding of mail-in ballots. In *Matter of the Election*, the court addressed an election contest claim based on defective mail-in ballots.

The unsuccessful candidate in the 2020 election for Third District Commissioner, Parker, filed an election contest claim because many voters received mail-in ballots that did not include the Third District Commissioner election, a race in which they were entitled to vote. The margin of victory in the election was 286 votes and there were 355 defective ballots. Parker argued that those who received defective ballots "were unable to vote for a candidate of their choice," and therefore their legal votes were rejected pursuant to N.J.S. 19:29-1(e). Witherspoon, the winner of the election, argued that N.J.S. 19:63-26 barred the challenge because the statute does not permit an election to be invalidated due to irregular mail-in ballots. The trial court held that the defective ballots were "rejected legal votes" and "found Parker met his burden to set aside the election" pursuant to N.J.S. 19:29-19(e).

Noting that election laws are to be construed liberally, the Appellate Division determined that the defective ballots were "rejected votes" because votes are "rejected" whenever qualified voters are prohibited from voting for a specific candidate due to an irregularity in the voting procedure that is no fault of their own. The Court rejected Witherspoon's argument that the Legislature intentionally omitted "mail-in ballot deficiencies" from N.J.S. 19:29-1 and enacted N.J.S. 19:63-26 to clarify its intent to exclude mail-in ballot deficiencies as potential grounds for invalidating an election. The Court found that such an interpretation would lead to an absurd result and construe election laws in a way to deprive voters of the franchise. The Appellate Division determined that the Legislature did not intend to eliminate the ability to contest an election pursuant to N.J.S. 19:29-1 just because the vote occurred by mail. It held that N.J.S. 19:63-26 establishes a presumption of validity when there is an irregularity or failure in the preparation or

forwarding of mail-in ballots, which may be rebutted by asserting one of the grounds in N.J.S. 19:29-1 as a basis to invalidate the election.

No currently pending bills address either N.J.S. 19:29-1 or 19:63-26. Ms. Schlimbach concluded by asking the Commission for authorization to conduct additional research and outreach on this issue.

Commissioner Rainone noted that Staff should conduct additional research to locate a case from the Township of Old Bridge in which the court overturned an election based on an error in the voter registration record which resulted in voters receiving erroneous mail-in ballots. Commissioner Rainone also suggested Staff review whether there have been any relevant bills introduced, as the Legislature has recently engaged in a flurry of legislation regarding the Vote-By-Mail Law.

Chairman Gagliardi noted that when an Appellate Division case is clear, it may be unnecessary to modify the statute. He continued by stating that because election laws are frequently relied upon by individuals who do not possess a legal background, it is important that the statutes are as clear as possible.

The Commission authorizes Staff to conduct additional research and outreach on this subject.

"Surrender" in the Context of Parental Rights

Laura Tharney discussed a Memorandum proposing a project to replace the term "surrender" in the context of voluntarily relinquishment of parental rights. Both Title 9, "Children – Juvenile and Domestic Relations Courts," and Title 30, "Institutions and Agencies," contain provisions concerning the voluntary relinquishment of parental rights and use the term "surrender" to refer to that relinquishment. The term "surrender" appears in twenty-one statutory sections across Title 9 and Title 30, and nineteen of these occurrences concern parental rights.

On June 30, 2022, the New Jersey State Bar Association (NJSBA) requested, pursuant to N.J.S. 1:12A-8, that the New Jersey Law Revision Commission review the use of the term "surrender" in the context of voluntary relinquishments of parental rights. The NJSBA asked the Commission to consider replacing the term "surrender" with the term "transfer" to describe more accurately the "nature of the issue."

The NJSBA expressed concern about a negative connotation or negative impact resulting from the use of the term "surrender," and explained that to witness a voluntary transfer of parental rights is sobering. Judges often acknowledge that parents voluntarily offering to terminate their parental rights are acting in the best interest of their child and are acting selflessly by placing the child's welfare above their own.

The NJSBA also explained that a parent who is inclined to surrender their parental rights in the best interests of their child may not be deterred by the use of the term surrender, but it is often a hurdle to overcome in what is an already emotionally charged court proceeding.

The NJSBA noted that other jurisdictions use terms such as "relinquish" or "voluntary transfer of parental rights" rather than "surrender," and asked that the Commission consider this issue. Ms. Tharney advised the Commission that Legislative Law Clerks Mara Pohl and James Finnegan conducted a 50-state survey of the terms used by other states in these circumstances. Their research confirms that states more commonly use the terms "relinquish" or "terminate" rather than "surrender."

Ms. Tharney also noted that Lisa Chapland from the NJSBA was present and asked if she had any comments for the Commission. Ms. Chapland stated that Ms. Tharney presented the matter very eloquently and thanked the Commission for its consideration of the project.

Commissioner Cornwell stated that he had no objection to the project and questioned whether this project has the same concern as the Commission's project to replace the term "inmate" in the New Jersey statutes with a less pejorative term. Ms. Chapland responded that the proposal is related to the negative connotation of the word "surrender," and further explained that the term "transfer of rights" is also a more accurate description of the process. She noted that parents are more likely to want to transfer their parental rights to someone who can better care for their children rather than surrender those rights.

Commissioner Bertone and Commissioner Bell both expressed support for this project. Commissioner Bell also mentioned that this project should have a similar impact to the Commission's project on the term "inmate," which garnered a very meaningful response and impacted many lives. He further noted that the Commission would like to continue to replace terms that cause unnecessary trauma to individuals, like these parents that are making a very difficult choice.

The Commission authorized additional research and outreach on this project.

Miscellaneous

• *Mid-year Bulletin*

Laura Tharney advised the Commission that Staff completed its work on the Commission's mid-year e-bulletin. Ms. Tharney distributed a draft version of the e-bulletin to each of the Commissioners. Chairman Gagliardi asked his fellow Commissioners to provide Staff with any additions, corrections, or modifications to the draft by the end of business on Wednesday, July 27, 2022.

• *Project Analysis*

Ms. Tharney examined the full slate of the Commission's projects and identified 17 projects dated from 2017 and earlier, and two from 2018, that she believes the Commission may want to consider concluding. She explained that she was in the process of reviewing these older matters and preparing at least one explanatory memorandum for the Commission's consideration at each meeting.

Chairman Gagliardi suggested that any project that is more than five years old be referred to the Commissioners for consideration and conclusion. Commissioner Long suggested that a brief explanation of Staff's rationale for concluding a project would be sufficient. Thereafter, the Commission could either conclude its work or request additional information to allow the Commissioners to make a determination regarding further work. Commissioner Bell agreed with Commissioner Long. He suggested Staff provide the Commission with a memorandum setting forth several matters that should be concluded, each accompanied by a brief summary of the reason for Staff's recommendation.

• *Election of a Chair*

Chairman Gagliardi noted that N.J.S. 1:12A-6 provides that "the commission shall elect one member as its chairman, who shall serve for a term of two years." He suggested that the election of the Chair should occur at the January meeting of every even numbered year. As this election is occurring in July, the result should be considered effective as of January 2022.

On the motion of Commissioner Long, seconded by Commissioner Bell, the Commission unanimously adopted this as the procedure for electing a Chair.

With a term beginning January 2022 and ending in January 2024, Commissioner Cornwell nominated Commissioner Vito Gagliardi to serve as Chair of the Commission. This nomination was seconded by Commissioner Long. The Commissioners then unanimously voted Commissioner Gagliardi serve as the Chair of the New Jersey Law Revision Commission.

Chairman Gagliardi thanked his fellow Commissioners and stated that he enjoys working on the Commission and serving as its Chair.

• *Election of a Vice-Chair*

Chairman Gagliardi stated that the Commission has adopted a procedure whereby the senior attorney appointee has served as the Commission's Vice-Chair. Commissioner Andrew O. Bunn has voluntarily served in this role over the past several years. Chairman Gagliardi suggested that the same procedure, and timeframe, adopted for election of Chair be used for the election of a Vice-Chair.

On the motion of Commissioner Rainone, seconded by Commissioner Bertone, the Commission unanimously adopted the procedure for the selection of a Vice-Chair. Thereafter, Commissioner Bertone nominated Commissioner Andrew O. Bunn to serve as Vice-Chair. This nomination was seconded by Commissioner Long. The Commission unanimously voted to elect Commissioner Bunn as the Vice-Chair of the New Jersey Law Revision Commission effective January 2022.

• *Legislative Law Clerks*

Commissioner Cornwell observed that as a result of the Commission's August hiatus this would be the last time that the Commissioners would see the Legislative Law Clerks in their

present capacity. Chairman Gagliardi thanked the Legislative Law Clerks for their hard work during their tenure with the Commission. He expressed his hope that they benefitted from their experience with the Commission. Commissioners Long, Bell, and Rainone concurred and thanked the Law Clerks for their great work.

Adjournment

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

The next Commission meeting is scheduled for September 15, 2022, at 4:30 p.m., at the office of the New Jersey Law Revision Commission.