

## MINUTES OF COMMISSION MEETING

September 16, 2020

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; and Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

### Minutes

On the motion of Commissioner Long, which was seconded by Commissioner Rainone, the Minutes from the July 30, 2020 meeting were unanimously approved by the Commission.

### Kidnapping

Samuel Silver discussed a Revised Draft Tentative Report proposing changes to clarify the “unharmful release” provision of New Jersey’s kidnapping statute, N.J.S. 2C:13-1(c)(1) as discussed in *State v. Sherman*, 367 N.J. Super. 324 (App Div. 2004) and *State v. Nunez-Mosquea*, 2017 WL 3623378 (App. Div. Aug. 24, 2017).

The cases of *State v. Sherman*, 367 N.J. Super 324 (App. Div.), *cert. denied*, 180 N.J. 356 (2004) *overruled in part on other grounds*, *State v. Daniel*, 182 N.J. 494 (2005) and *State v. Nunez-Mosquea*, 2017 WL 3623378 (App. Div. Aug. 24, 2017) illustrate that the “unharmful release” provision of New Jersey’s kidnapping statute - N.J.S. 2C:13-1(c)(1) - does not set forth the type of harm contemplated by the Legislature for a defendant to be convicted of first degree kidnapping. Mr. Silver noted that the word “harm” does not appear in the current statute. The term “unharmful,” however, appears in the statute and is referred to as the “unharmful release” provision.

At the April 13, 2020 Commission meeting, Staff was authorized to conduct further research in this area. In June of 2020, the Commission directed additional drafting.

As modified, the unlawful conduct that constitutes kidnapping is now set forth in a single section and grouped according to the type of prohibited action. The unification of sections a. and b. necessitated the renumbering of the balance of the statute. The newly drafted section b.(1) clarifies that a defendant will be convicted of first degree kidnapping if the State proves that the defendant “knowingly” harmed or “knowingly” released the defendant in an unsafe place. Next, section b.(2) clarifies that if the victim of a kidnapping is released “unharmful” and in a “safe place” the defendant is guilty of a second degree kidnapping. Mr. Silver noted that the substance of b.(3), c., d., e. and g. was not changed and each section was merely reformatted to clarify the contents. The statute, in section f. now provides for the harm recognized by both the Code of Criminal Justice and Model Jury Charge.

Commissioner Long asked whether section a.(1) can be further modified to eliminate subsections (B) and (C). She noted that the removal of the defendant from the place where he or she is found covers each of the scenarios set forth in subsections (B) and (C). Mr. Silver noted that the wording for these subsections was original to the statute and were consolidated into section a.(1) from what was originally section b. Commissioner Long stated that she appreciated the asportation aspect that gave rise to this portion of the statute, but noted that subsection a.(1)(A) is so general that subsections a.(1)(B) and (C) are now superfluous. Chairman Gagliardi suggested that the a.(1)(B) and (C) appear in the Appendix with strikethrough to provide stakeholders with the opportunity comment on its proposed elimination from the statute.

Commissioner Bell questioned whether the word “sells” is necessary in section b. subsection 3(C). Commissioner Bunn commented that “sells or delivers” the victim to another for pecuniary gain appears to involve the same action. Mr. Silver noted that structurally the sentence presents the classic Oxford comma problem. Commissioner Long concurred and stated that the elimination of the words “sells or” from the sentence would eliminate future confusion as to the meaning of this sentence.

In subsection e.(1) Commissioner Bell recommended that the threat of “physical danger” be replaced with the term “harm” as set forth in the newly drafted section f. Commissioner Bell noted that the harm, as discussed in the case law, can either be physical or emotional harm. John Cannel said that the statute may have been drafted to only include physical harm to prevent frivolous claims of danger from being proffered by one parent against another. Mr. Silver noted that subsection e.(2) sets forth a list of entities that must be notified if a child is removed from the custody of one parent. Commissioner Bell added that the notification of these entities would serve as a check on frivolous behavior.

Subject to the modifications requested by the Commission and on the motion of Commissioner Bunn, which was seconded by Commissioner Long, the Commission unanimously voted to release the project as a Tentative Report.

### **Traumatic Event**

Arshiya Fyazi and Jennifer Weitz jointly discussed with the Commission a Draft Tentative Report containing updated drafting in the Appendix and proposing clarification of the term “traumatic event” as used in the accidental disability retirement statute, N.J.S. 43:16A-7.

Ms. Fyazi said that at the July 30, 2020 meeting, the Commission considered a Draft Tentative Report proposing clarification of the term “traumatic event” in the accidental disability retirement benefits statute, N.J.S. 43:16A-7(a)(1), and as discussed in *Moran v. Bd. of Trs, Police & Firemen’s Ret. Sys.*, 438 N.J. Super. 346 (App. Div. 2014) and *Mount v. Bd. of Trs, Police & Firemen’s Ret. Sys.*, 233 N.J. 402 (2018).

The term “traumatic event” is not defined in the accidental disability benefits statute, a key threshold for an applicant seeking enhanced disability payments. In the absence of the definition,

the New Jersey Courts developed two tests to resolve cases involving applications for an accidental disability pension.

The New Jersey Supreme Court in *Richardson v. Bd. of Trs, Police & Firemen's Ret. Sys.*, 192 N.J. 189 (2007), provided a five-pronged test for assessing applications claiming physical injury. A year later, *Patterson v. Bd. of Trs, Police & Firemen's Ret. Sys.*, 194 N.J. 29 (2008) built on the *Richardson* decision and gave an additional requirement for proving mental disability as a result of a mental stressor.

In *Moran* and *Mount*, the Court had to determine whether, during the regular performance of the member's job, an unexpected event occurred that directly resulted in the member's disability. In *Moran*, a firefighter claimed permanent and total physical disability and in *Mount*, two police officers claimed mental incapacity due to a traumatic event.

Ms. Weitz explained that the revised Appendix proposes the modification requested by the Commission at the July 2020 meeting – to further clarify the requirements set forth for physical and non-physical disabilities. As drafted, the language contained in subsection a. consisted of one large block paragraph. The paragraph has been subdivided into subsections a. through f. to improve accessibility and for ease of reference.

The definition of traumatic event contained in newly created subsection b., she continued, is based upon the language provided by the Supreme Court in *Richardson*. The definition follows the term “traumatic event” as stated in section a. to aid the reader.

Newly created subsection c. consists of language originally provided for in section a. (shown in strikethrough above its new location) that was subdivided into two different sections for ease of reference. As per the Commission's request the term “willful” has been stricken from the statute as the provision relates to a member's negligence.

The language contained in newly created subsection d. is based on the language provided by the Supreme Court in *Patterson*. This newly created subsection addresses cases arising from mental disabilities attributed exclusively to mental stressors. This provision is based on the Supreme Court's determination in *Mount*.

The language contained in newly created subsection e. consists of an existing paragraph, shown in strikethrough below its new location, that was moved to make it more cohesive with section a. of the statute as it relates to specific disabilities not directly arising from the “traumatic event.” Reference in subsection j.(1) has been amended to reflect newly created applicable subsections. The remaining provisions of the statute have not been altered; the existing language has been divided into sections and subsections to make the statute more accessible.

Initially, Commissioner Bunn noted that in section c., subsection 2, an apostrophe “s” should be added to the word “member.” Commissioner Bell suggested that the exclusion of pre-existing disease as set forth in the definition of “traumatic event” should not include a gradual acceleration of such a condition. Commissioner Bunn opined that situations involving “heart

attacks” are difficult. It should not matter, he continued, that it was long term arterial sclerosis because coverage stems from the fact that the traumatic event is instantaneous.

Chairman Gagliardi questioned whether the Commission should engraft language onto the statute that tips the scales one way or another in a fact sensitive area. Commissioner Bunn responded that the case law in this area has drifted far from the statute. The statute, he continued, was to address suddenness of the event. Commissioner Long concurred with Commissioner Bunn, adding that pre-existing conditions that are aggravated and accelerated by the traumatic event must be addressed by the statute.

Commissioner Bunn suggested that section b., subsection 4, reflect that a traumatic event is “not the result of a pre-existing disease or condition known to the member, that is aggravated or accelerated by the work.” Commissioner Long disagreed with this modification. Commissioner Bell questioned the level of knowledge would be required as a result of this modification. Commissioner Rainone responded that under these circumstances the member would qualify for disability benefits. The question would be whether they received the enhanced benefit under the statute. Chairman Gagliardi stated that the issue would then become whether the employee “knew” about the condition. Commissioner Rainone suggested that employees would object to mandatory yearly physicals conducted by their employers.

Commissioner Bell stated that the reasonable person referenced in section d.(2) should have “similar background and training” as the member. Commissioner Bunn commented that in (d)(2) it may be necessary to add “in a member’s circumstances, including similar background and training.” Commissioner Long added that in section c.(2) the reference to “willful negligence” must be addressed because that is not what was intended. Commissioner Bell suggested replacing the term with the term “willful misconduct.” Commissioner Long opined that Commissioner Bell’s recommendation is closer to the original intent of the statute.

With the addition of the changes recommended by the Commission, and on the motion of Commissioner Bell, seconded by Commissioner Bunn, the Commission unanimously agreed to release the project as a Tentative Report.

### **Parentage**

John Cannel discussed with the Commission a Draft Tentative Report proposing modifications to the New Jersey Parentage Act, N.J.S. 9:17-38 et seq.

Mr. Cannel advised the Commission that the current work seeks to clarify situations involving gestational carrier agreements, and to deal more comprehensively with the rights and obligations of spouses independent of biological parentage. He stated that at the May 21, 2020 meeting, the Commission recommended that Staff discuss this Report with Solangel Maldonado, a Professor at Seton Hall University School of Law, who has worked with the American Law Institute in this area of law.

Professor Maldonado graciously provided preliminary comments and insights about the content of the proposed modifications to New Jersey's Parentage Act.

Mr. Cannel asked the Commission whether the definition of spouse should be limited to spouses from ceremonial marriages or whether it should include couples living together in a settled relationship without marriage. According to Mr. Cannel, a limited definition of this term might not include psychological parents while a broader definition would extend the term beyond that of a ceremonial spouse. Commissioner Long expressed a preference for a definition that included the three statutorily-recognized ceremonial relationships, noting that such a definition does not limit the rights of others who are involved in a parenting capacity.

Mr. Cannel also addressed the issue of poly-parent situations, stating that the structure of the present draft reflects limitation of two parents. Mr. Cannel said that the Uniform Parentage Act and the American Law Institute recognize that a child may have more than two parents. He explained that other jurisdictions have left it up to the Court to determine the issue of parentage.

Laura Tharney suggested that the Report acknowledge situations involving more than two-parents. Commissioner Long responded that three-biological-parent arrangements are already a scientific reality and should therefore be addressed. Commissioner Bunn questioned whether it is the role of the Commission to define the number of parents an individual may have. He suggested that if the Legislature wished to address this issue, it is within their province to do so.

Mr. Cannel discussed parentage by way of donated genetic material such as a donated egg and sperm. He advised the Commission that he deleted the physician requirement but substituted a written contract provision between the spouses and the donor where all three parties can participate as parents to the child. As an alternative, the spouses will be legal parents and the donor a psychological parent. In instances of multiple donors, the child can have up to two legal parents and as many psychological parents as the facts indicate. Mr. Cannel acknowledged that more research may be needed on this issue to cover all scenarios.

The Commission recommended that Staff conduct additional outreach on those areas of concern raised by Professor Maldonado and the members of the Commission. Chairman Gagliardi advised Mr. Cannel that the Commission would, at a subsequent meeting, be happy to review the project as a Revised Draft Tentative Report.

### **Citizen's Arrest**

New Jersey's statutory reference to the "citizen's arrest doctrine" dates back to 1898. By 1910, the doctrine of "citizen's" arrest had been incorporated into the compiled statutes. Over the next century, the substance of the statute would remain virtually unchanged. Samuel Silver discussed with the Commission the modification or repeal of three statutes, authorizing the arrest of another by a private citizen.

Mr. Silver noted that N.J.S. 2A:169-3 provides that any constable or police officer shall, and any other person may, apprehend without warrant or process any disorderly person who commits an offense in the presence of the apprehending person. The statute does not address: the

level of probable cause required to make an arrest; the length of detention that is legally permitted; or set forth the appropriate amount of force permitted to effectuate the arrest. The statute also seems to be at odds with New Jersey Rule of Court 7:2-2(b)(1).

Another statute that authorizes a citizen's arrest is New Jersey's shoplifting statute, N.J.S. 2C:20-11(e). Known as the "Shopkeeper's Privilege," this statute permits a merchant to detain a suspected shoplifter in an attempt to recover unpurchased merchandise. The detention of a shoplifter must be premised on probable cause, but the actual theft need not happen in the merchant's presence. The statute does not specify the level of force that a merchant may employ, although the merchant must effectuate the arrest "in a reasonable manner." In addition, the statute does not set forth the length of time a suspected shoplifter may be detained, merely suggesting that any detention be "for not more than a reasonable time."

Similar to shopkeepers, library employees are permitted to detain individuals suspected of stealing library materials. The statute requires that the detention be based on probable cause, but the actual theft need not happen in the library employee's presence. This statute also does not specify the level of force that a library employee may employ in making an arrest, requiring that it be done "in a reasonable manner", and it does not set forth the length of time an individual may be detained, suggesting that any detention be "for not more than a reasonable time."

Finally, recent attempts to curb the spread of Covid-19 include the gubernatorial use of executive orders. One such executive order requires individuals, under certain circumstances, to wear a face covering. The New Jersey statutes provide that "any person who violates an executive order shall be adjudged a disorderly person." This raises the question of whether individuals who disobey the mask mandate can be arrested pursuant to the citizen's arrest doctrine set forth in N.J.S. 2A:169-3.

Defense attorneys, former prosecutors, members of the law enforcement community, and the Governor, agree that citizens should not attempt to effectuate a citizen's arrest against a person not wearing a mask.

Staff was authorized to conduct further research and outreach to determine whether these statutes would benefit from modification or elimination.

### **Meaning of Necessary**

In *Glassboro v. Grossman*, 457 N.J. Super. 416 (App. Div. 2019), the Borough of Glassboro brought a condemnation complaint against landowners pursuant to the Local Redevelopment and Housing Law (LRHL) – N.J.S. 40A:12-1 & N.J.S. 40A:12-8(c). On behalf of Benjamin Cooper, a legislative intern, Samuel Silver proposed a project to clarify the term "necessary" within the context of redevelopment projects, specifically the LRHL.

A vacant lot within a redevelopment zone served as the basis of the litigation in *Glassboro v. Grossman*. When the property owner refused to sell it to the municipality, the local government instituted a condemnation action. The municipality claimed that the land would be used to increase the availability of public parking. At the hearing on the order to show cause, the borough attorney

advised the Court that increased public parking was only one possible use. Although the trial court concluded that the Borough showed an adequate public purpose for this property, it rejected the Borough's argument that the government could simply take property within the redevelopment area at any time without having to provide a reason for it. The landowner appealed the trial court's decision.

The Appellate Division considered two issues. First, it considered whether the statute required the condemning authority to articulate a definitive need to acquire a specific parcel for an identified, specific, redevelopment project. It also considered whether the governmental unit may stockpile real estate for future, unspecified uses.

The LRHL distinguishes the redevelopment designation from the acquisition function. Pursuant to N.J.S. 40A:12A-7 once an area is designated as a "redevelopment area" the municipality must adopt a "redevelopment plan" before moving forward. The plan must be sufficiently complete to indicate its relationship to the definite municipal objectives and indicate proposed land uses and building requirements in the redevelopment area. Once the plan is adopted the municipality is empowered to acquire, by condemnation, any land or building which is necessary for the redevelopment project.

The LRHL does not authorize municipalities and redevelopment agencies to take private property for no purpose beyond holding it until some future specific need presents itself. The "take first, decide later" approach is contrary to the text of the statute and the public accountability objectives. The Court determined that "necessary," for purposes of the statute, means "reasonably necessary" or no more than is required. The term "reasonably" does little but emphasize that absoluteness or indispensability is not required. It is reasonable necessity in light of all the facts and circumstances and balancing all interests.

Commissioner Rainone commented that this was a poorly-reasoned decision. The best practice is for a municipal attorney to thoughtfully prepare a redevelopment plan. That does not appear to have been done in this case. Commissioner Bunn suggested that the standard should be "necessity" and noted that this is an important issue and that the case law could assist in clarifying the statute. Commissioner Rainone expressed the concern that these types of matters are fact-sensitive, and concurred that the standard is "necessity." Chairman Gagliardi suggested that this is not a project for the Commission. Commissioner Long concurred. The Commission declined to proceed into this area.

### **Worker's Compensation Act & Auto Insurance Cost Recovery Act**

Chris Mrakovcic discussed a Memorandum proposing a project to clarify N.J.S. 39:6A-6 to address worker's compensation carriers' recovery of economic losses under N.J.S. 34:15-40 pursuant to the holding in *N.J. Transit Corp., v. Sanchez*, 242 N.J. 78 (2020).

The Auto Insurance Cost Recovery Act (AICRA) (N.J.S. 39:6A-6) allows paid workers' compensation benefits to be deducted from the insurer's personal injury protection (PIP) payments. However, it is silent regarding the ability of an employer to assert a subrogation claim if the

employee elected the limitation-on-lawsuit option permitted by N.J.S. 39:6A-8(a) and sustained no permanent injury. The Workers' Compensation Act (WCA) (N.J.S. 35:15-40) authorizes employers and workers' compensation carriers to seek reimbursement from third-party tortfeasors.

Mr. Mrakovic discussed the interplay between the provisions of the WCA and AICRA as litigated in *N.J. Transit Corp., v. Sanchez*. In that case an on-duty N.J. Transit employee was injured when his work vehicle was rear ended by a vehicle driven by the defendant. The employee did not suffer any permanent injury and did not seek PIP benefits. Instead, he was compensated by workers' compensation insurance.

N.J. Transit filed a complaint against the original tortfeasors, seeking to recoup workers compensation benefits pursuant to AICRA. Defendant argued that the no-fault insurance statute barred the plaintiff's subrogation claim because the injured employee elected the limitation-on-lawsuit option and did not suffer permanent injury.

The trial court barred N.J. Transit's subrogation action because the employee sustained no unrecovered economic loss as defined in AICRA and the subrogation claim would subvert statutory goals. The Appellate Division reversed the decision of the trial court and concluded that N.J. Transit's subrogation action did not implicate the limitation-on-lawsuit threshold imposed by N.J.S. 39:6A-8(a). The Court reasoned that because the employee's economic loss was covered by workers' compensation benefits, and not by PIP, N.J. Transit's subrogation action did not run afoul of AICRA.

The New Jersey Supreme Court affirmed the Appellate Division's judgment by an equally divided Court, holding that workers' compensation carriers have an absolute right to seek reimbursement from a tortfeasor for benefits the carrier has paid to an injured employee. The Court noted that when the Legislature enacted AICRA, it did not amend the WCA to eliminate subrogation, nor did it make any exceptions to the WCA's subrogation rights. In sum, the Court found that the legislative intent was not to eliminate workers' compensation carriers' subrogation rights. The dissenting justices noted that New Jersey's no-fault automobile insurance system makes the workers' compensation carrier primarily responsible for reimbursing economic losses. The dissent interpreted "primary responsibility" to mean that when an injured driver's economic losses are collectible under a PIP policy, but paid by the employer's workers' compensation carrier, the no fault system prohibits a workers' compensation subrogation action against the tortfeasor or the tortfeasor's insurance carrier.

Commissioner Bell stated that he was reluctant to codify an opinion by an equally divided New Jersey Supreme Court. Commissioner Bunn commented that the decision is very clear and Chairman Gagliardi agreed. The Commission agreed that no action would be taken in this area.

### **Indemnity**

Samuel Silver and Julianna Dzwierzynski, a Seton Hall Law School legislative extern, prepared a Memorandum proposing a project to clarify the statutes pertaining to the defense or indemnification of State and County employees in legal actions pursuant to N.J.S. 59:10A-1 and



N.J.S. 40A:14-117 and as discussed by the Supreme Court in *Kaminskas v. Ofc. of the Attorney General*, 236 N.J. 415 (2019). Mr. Silver discussed the Memorandum with the Commission.

The New Jersey Tort Claims Act, N.J.S. 59:10A-1, provides that the Attorney General shall, upon the request of a current or former employee of the State, provide for the defense of any action brought against the employee on account of an act or omission in the scope of their employment. Similarly, the governing body of a county is required to provide a member of the county police with the necessary means for the defense of any action arising out of or incidental to the performance of the officer's duties pursuant to N.J.S. 40A:14-117.

County employees are frequently called upon to act as an arm of the State in the prosecution of criminal cases. The New Jersey statutes do not address a situation in which a county officer is called upon to participate in a state criminal prosecution, is subsequently sued, and both the County and the State decline indemnify. This was precisely the situation *Kaminskas v. State*, 236 N.J. 415 (2019).

In *Kaminskas*, the defendant in a robbery prosecution agreed to take a polygraph examination. The County did not employ a polygraphist, and it requested the services of the Union County Police Department's polygraphist. The defendant's conviction for robbery was overturned after the polygraphist's testimony was determined to be improper. On retrial, the defendant was acquitted, and then sued all of the officers and prosecutors involved in the prosecution of his case.

Each of the officers sought indemnification from the Attorney General pursuant to the Tort Claims Act. The Attorney General agreed to indemnify the County Prosecutors. The Attorney General reasoned that N.J.S. 40A:14-117 required the County government to indemnify each of the County Police Officers involved in the case. The County, however, maintained that the County Officers were acting as an arm of the State, that their actions were not incidental to their county employment, and that their actions were for the sole benefit and at the exclusive direction of the State. The Appellate Division affirmed the decision of the Attorney General and the Supreme Court granted the County Officer's petition for certification.

The Tort Claims Act, N.J.S. 59:1-3, defines an employee as an officer, employee, or servant, whether or not for money, or part-time, who is authorized to perform any act or service. This definition does not include independent contractors. In order for a county employee to qualify for indemnification in a legal proceeding, the proceeding must arise out of or be incidental to the performance of the officer's duties. Although the polygraph in *Kaminskas* did not appear to fall into either category, the New Jersey Supreme Court determined that this was the case and that the County was required to indemnify the officers.

There appears to be a class of individuals who may not be covered by either N.J.S. 59:10A-1 or N.J.S. 40A:117. These employees may find themselves in a situation in which neither the State nor the County will provide indemnification. This has the possible effect of discouraging county employees from participating in state criminal prosecutions.

At the July 30, 2020 meeting of the Commission, Staff was asked to examine the holding of the New Jersey Supreme Court in *Gramiccioni v. Dept. of Law & Pub. Safety*, No. A-21-19, slip op. at 1 (N.J. July 28, 2020). In that case, the Court considered whether the Department of Law’s determinations regarding the indemnification of Monmouth County Prosecutor’s was consistent with the Court’s holding in *Wright v. State*, 169 N.J. 422 (2001). The case did not involve the issue presented in *Kaminskas*, but the Court recognized that the issue of indemnification should not be applied like a stencil to all cases because “some factual settings call for a more nuanced analysis than others.”

Commissioner Rainone asked whether there is a hole in the statute that may leave county workers without coverage since county agencies routinely cooperate with the State, and officers are acting in their official capacity when doing so. He also raised the question of who paid the polygraphist in *Kaminskas*. Chairman Gagliardi opined that that this area can be very confusing, and the Commission should attempt to clarify the statute. Commissioner Rainone agreed, stating that if there is even a remote chance that a police officer could be left defenseless, an effort to improve the statute must be made. The Commission authorized Staff to engage in further work in this area.

### **Remarriage**

Arshiya Fyazi discussed the status of her project involving remarriage and alimony obligations as governed by N.J.S. 2A:34-23 and as discussed in *Sloan v. Sloan*, 2017 WL 1282764 (App. Div. Apr. 6, 2017). Ms. Fyazi described the 2014 Amendments to N.J.S. 2A: 34-23, including subsections (j) through (n), which address modifications to alimony payments due to retirement, change in income, temporary remedies, and cohabitation. The Amendments do not explicitly set forth whether they are to be applied retroactively.

At the September 2018 Commission meeting, Staff was authorized to contact practitioners in the matrimonial bar to ascertain whether the issue raised in *Sloan* is a recurring issue that requires the Commission’s attention. In June of 2020, the Commission considered the results of the outreach conducted by Staff. The Commission authorized Staff to conduct additional research to determine whether any recent legislation or case law has discussed whether or not the 2014 Amendments to N.J.S. 2A:34-23 were retroactive.

Ms. Fyazi noted that the statutes governing alimony are set forth in N.J.S. 2A:34-23 through 2A:34-27. A review of these statutes confirmed that they were most recently amended in 2014. Currently, there are five bills pending that seek to amend N.J.S. 2A:34-23, none of which address the retroactive effect of the 2014 Amendments.

In 2016, the New Jersey Supreme Court briefly discussed the effect of the Amendments in *Quinn v. Quinn*. In a footnote, the Court said that that the Amendments to the alimony statute were not to be applied retroactively where the property settlement agreement was agreed upon prior to the enactment. Since *Quinn*, the New Jersey Supreme Court has not considered any cases on the issue of retroactivity of the Amendments. Ms. Fyazi said that there are numerous appellate and trial court cases that dealt with the issue of retroactive application of the 2014 Amendments.

The first category of cases concern matrimonial agreements or final orders were filed before the adoption of the Amendments and discuss the issue of modification of alimony. Under this category, there is consensus among the courts on the need to uphold prior agreements or final orders filed before the adoption of the statutory Amendments and the inapplicability of the 2014 Amendments. These cases align with the reasoning in *Quinn v. Quinn*. The second category involves cases where the judgment of divorce, post-judgment litigation, and/or marital settlement agreements between the parties finalized prior to the effective date of the Amendments are silent on the issue of alimony modification. The opinions in these cases vary from court to court, with no universal consensus regarding whether the subject Amendments apply retroactively or not.

Chairman Gagliardi asked whether a resolution to this issue is possible without taking a policy position. Commissioner Long opined that picking a side would be necessary, to which Chairman Gagliardi agreed. Commissioner Long noted the distinction between applying the law in effect at the time the conduct took place versus applying the law in effect at the time of application. She said that this did not seem right, but that making the determination involves picking sides. As a result of a prior commitment, it was necessary for Commissioner Bell to leave the meeting. Prior to his departure he transmitted his qualified support for work in this area. Commissioner Bunn stated that he did not know if people were agitating for this change, but that changes to this area of the law nonetheless belong to the Legislature, to which Commissioners Bertone and Rainone agreed.

The Commission agreed to conclude work in this area without a recommendation.

### **Miscellaneous**

Laura Tharney advised that the Commission will have the pleasure of working with several new pro bono students on a number of projects and that the Commission will be hosting a student from the New Jersey Institute of Technology for the fall semester.

John Cannel advised he was asked by the Uniform Law Commission to move forward with work on the Uniform Faithful Electors Act. He asked whether he should prepare the act for consideration by the NJLRC. Commissioner Bunn noted that because this is a uniform law, it is within the Commission's mandate to review the proposed Act. Chairman Gagliardi concurred with Commissioner Bunn's comments. The Commission authorized an examination of this subject matter at a subsequent meeting of the Commission.

### **Adjournment**

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

The next Commission meeting is scheduled to be held on October 15, 2020, at 4:30 p.m.