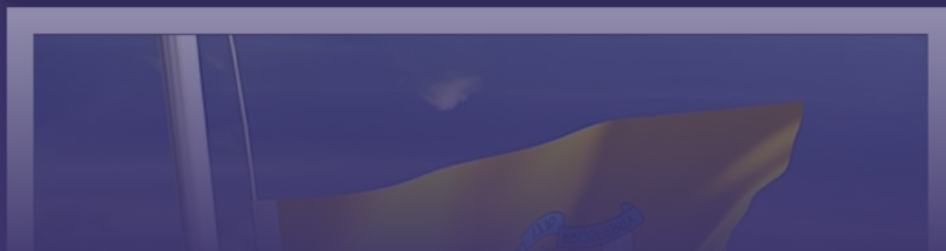


ANNUAL REPORT - 2013

# New Jersey Law Revision Commission





# TWENTY-SEVENTH ANNUAL REPORT

2013





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This Report is prepared for submission to the Legislature pursuant to N.J.S. 1:12A-9.

The Report can also be found on the website of the NJLRC at:

<http://www.lawrev.state.nj.us/annual.html>

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## The New Jersey Law Revision Commission

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**Vision:**

To enhance New Jersey's long tradition of law revision and to support the Legislature in its efforts to improve the law in response to the existing and emerging needs of New Jersey citizens.

**Mission:**

To work with the Legislature toward the clarification and simplification of New Jersey's law, its better adaptation to present social needs, and the better administration of justice. To carry on a continuous review and revision of New Jersey's body of law, and engage in scholarly legal research and work, in order to enhance the quality of our recommendations to the Legislature and to facilitate the implementation of those recommendations.



**Clarify**

**Simplify**

**Remedy**

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## Statement of the Chairman

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As the Chairman of the New Jersey Law Revision Commission, I am pleased to present the 2013 Annual Report of the New Jersey Law Revision Commission for the consideration of the Legislature.

The Commissioners and Staff are proud of the NJLRC's history and are looking forward to continuing to serve the Legislature in the future, and working in 2014 toward improved methods for identifying, developing, and carrying out law revision projects.

In 2013, five NJLRC Reports were enacted by the Legislature. Of those five, some were recently released by the Commission and others were completed years ago. The enactment of those older Reports this year, as in prior years, illustrates the lasting benefit of the law revision efforts undertaken by the Commission, and the longstanding contribution made by its work toward the improvement of New Jersey's laws. In addition, although the goal of the Commission is to prepare Reports that may serve as the basis for enactments by the Legislature, the citation of Commission Reports by academic writers and judges demonstrates a secondary practical application of the research and analysis of the Commission.

I would like to take this opportunity to thank those who serve as Commissioners. Throughout our history, the NJLRC has been fortunate in the quality and the dedication of its Commissioners. The work of the Commission owes a great deal to the experience, care, and analysis that they contribute to our process. My thanks also to the Commission Staff members who diligently pursue projects that may be of interest to the Legislature, and to the Legislators, Legislative Staff, the Office of Legislative Services, Partisan Staff, and others whose attention to the work of the Commission allows us to improve the law of the State.

Finally, on behalf of the Commission, I thank the many commenters from government entities, the legal profession, the academic community, the private sector, and the public, who contributed so generously of their time, experience and expertise to assist the Commission with its various projects. I trust that the quality of the work of the Commission reflects this contribution.

We anticipate that 2014 will be a busy year for the Commission and we look forward to continuing work on several significant areas of law revision as described in this Report, as well as projects that will be developed in 2014.

Vito A. Gagliardi, Jr., Esq.  
Chairman  
New Jersey Law Revision Commission

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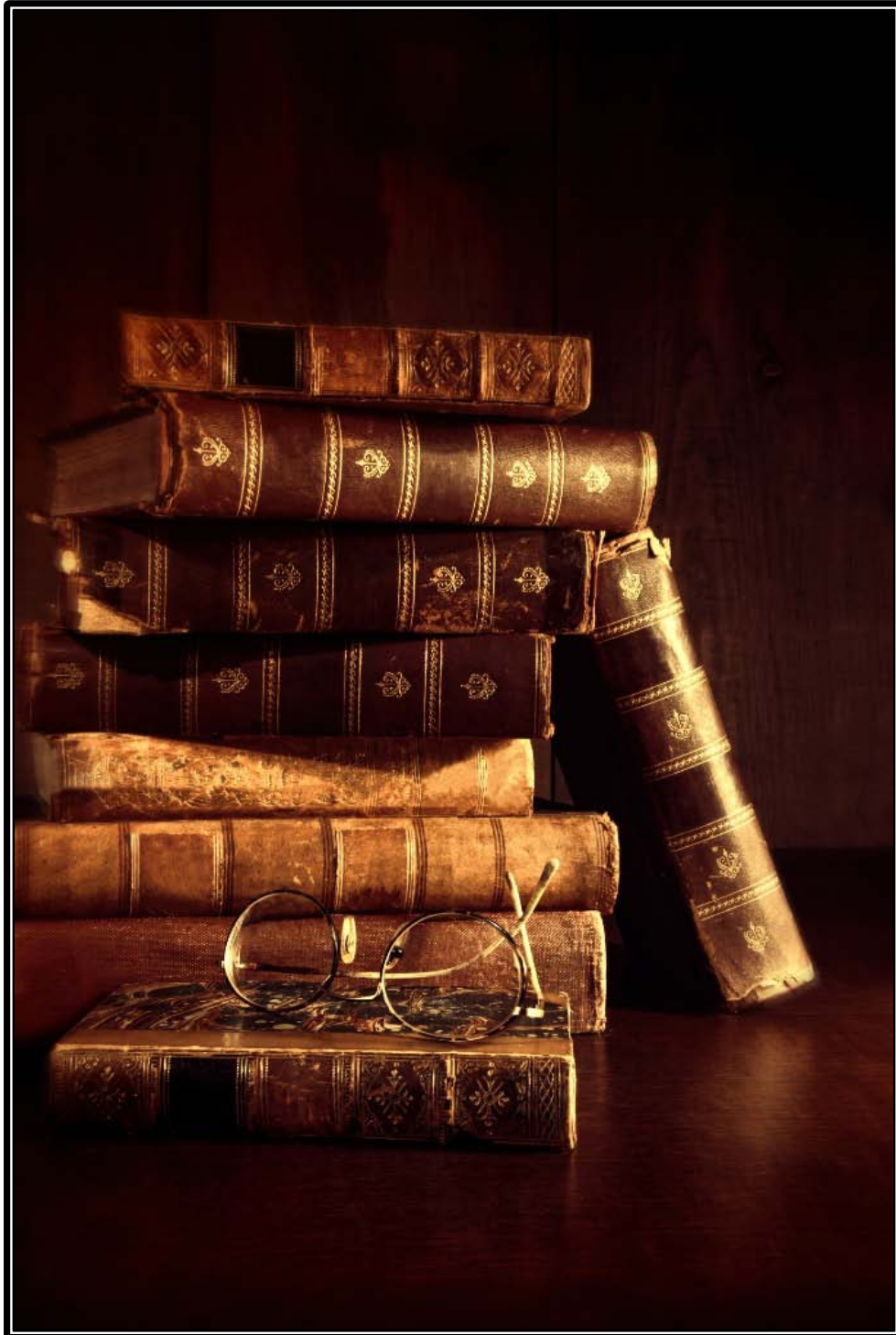
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## 1. – Overview of the Work of the NJLRC in 2013

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## ***1. – Overview of the Work of the NJLRC in 2013***

### **General Overview:**

The New Jersey Law Revision Commission, an independent Legislative commission, serves the citizens of New Jersey and all branches of the State government by identifying areas of New Jersey law that can be improved by changes to the New Jersey statutes. The independence of the Commission reflects the wisdom of the Legislature in creating an entity that focuses exclusively on the goals of improving New Jersey's law and identifying new ways to adapt the law to better meet the changing needs of New Jersey's citizens.

The projects on which the Commission works in any given year vary in size from recommending a change to a single subsection of a statute to the revision of an entire title. In 2013, as in recent years, approximately one-third of the projects on which the NJLRC worked resulted from consideration of the work of the Uniform Law Commission, about one-third from the NJLRC's monitoring of New Jersey case law, and about one-third from consideration of projects recommended by members of the public.

After a potential project has been identified, Commission Staff researches the area of the law and seeks input from those who are impacted by the law, as well as neutral individuals with expertise in the area under consideration. The goal of the NJLRC is to prepare and submit to the Legislature high quality proposals for revision that include consensus drafting whenever it is possible to do so, and clearly identify any areas in which consensus could not be achieved. This is done to provide the Legislature with a record of the outstanding issues and to identify policy choices that may warrant consideration during the Legislative process. NJLRC Staff members include detailed comments in all Reports identifying the recommendations made by commenters during the process, and the reasons underlying the drafting choices made by the Commission.

In 2013, the New Jersey Law Revision Commission worked on 31 individual projects. Work on 13 of those projects was completed, and Final Reports and Recommendations were submitted to the Legislature for consideration, 9 of which recommended Legislative action. The NJLRC concluded work on two projects before reaching the Final Report stage. The Commission also released 8 Tentative Reports, representing the Commission's first formal statements of work in these areas of the law on which additional input is sought in order to bring these projects to conclusion. Work continues on 8 additional projects that have not yet reached the Tentative Report stage.

In addition to its work on these projects, the NJLRC also expanded the general outreach of the Commission in 2013, in keeping with its statutory mandate to consider recommendations from "learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally for the improvement and modification of the general and permanent statutory law of the State." N.J.S. 1:12A-8.

Increasing the NJLRC outreach, beginning with the New Jersey law school communities, bar associations, lawyers and law firms within the State, will broaden the range of projects on which the Commission works, enlarge the pool of potential commenters on those projects, and ultimately enhance the work that the NJLRC brings to the attention of the Legislature. It will also enable the Commission to focus on the identification and presentation of projects to the Legislature in areas not likely to be advanced by other sources or interest groups, allowing the NJLRC to better serve the Legislature and the citizens of New Jersey. The Commission will continue this expansion of its outreach in keeping with its statutory mandate and will also

continue its efforts to improve the distribution and accessibility of its monthly Agendas and its Reports, and remains willing to add recipients to its email lists for any of its materials on request.

Another outgrowth of the Commission's 2013 outreach was the expansion of the NJLRC's interaction with students from New Jersey's three law schools and other educational institutions. In addition to its existing program of annually hiring legislative law clerks, the NJLRC is now working to provide opportunities for student for-credit externship placements, and student pro bono hours. During the Spring semester of 2013, research and drafting assistance was provided to the NJLRC by pre-law student externs Vanessa Espinal and Maliha Riaz through a cooperative relationship with the New Jersey Institute of Technology and its Law, Technology & Culture program. During the Fall semester of 2013, pro bono legal research and drafting assistance was provided to the NJLRC by law students Amanda Follett, Naveed Karbassyoan, and Carla Zappi of the Rutgers School of Law – Camden in cooperation with Professor Jill Friedman and Professor Sarah Ricks and Camden's Pro Bono Research Project, and by law student Joseph Amico of the Rutgers School of Law – Newark in cooperation with Neisser Program Director Jessica Kitson and Newark's Eric Neisser Public Interest Program. The NJLRC looks forward to working with additional students for legal research and drafting assistance in 2014, and to welcoming law student externs from the Seton Hall University School of Law for the Spring 2014 semester.

While increasing its interactions with individuals and groups throughout the State who might have recommendations for changes to the law, the NJLRC also worked this year to make its process more transparent, and its work more accessible, by adding content to its website.

In addition to the information previously available on the website, found at [www.njlrc.org](http://www.njlrc.org), visitors to the site can now access: all of the Annual Reports released by the Commission since it began work in 1987; all Commission Agendas since 2003; a list of all bills introduced during the current year based on the work of the NJLRC; New Jersey cases and Journal articles making reference to the NJLRC; continuing legal education presentations and other presentations prepared by Commission Staff in recent years; a page containing Concluded projects on which the work of the Commission was terminated without the issuance of a Final Report; and an "NJLRC Snapshot" link on the website's Home page that provides access to an Information Sheet containing a four page summary of information regarding the operation of the NJLRC, its projects, its process, and its history. The Commission looks forward to the increasing the use of electronic media and communications consistent with the State's ongoing efforts in that direction.

The NJLRC will continue its efforts to identify and implement ways in which it can improve its process and its product in the coming years.

### **Enacted Reports:**

In 2013, A-3357/S-2224, based on one of two NJLRC Final Reports dealing with pejorative terminology affecting persons with developmental, intellectual and psychiatric disabilities, received bipartisan support and passed both houses of the Legislature unanimously. In August 2013, the governor signed the bill into law as L.2013, c.103. Before the enactment of L. 2013, c.103, the NJLRC had released two Final Reports dealing with pejorative terminology affecting persons with developmental, intellectual and psychiatric disabilities. The first was released in 2008, in direct response to the amendment to Article II, Section I, Paragraph 6 of the New Jersey Constitution. After enactment of P.L. 2010, c. 50, a law addressing some of the types of pejorative terms found in New Jersey statutes, the NJLRC released the second report, which was the basis of Bill A-3357/S-2224.

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Also in 2013, the Legislature passed bill S2144/A3613, based on four individual NJLRC Final Reports, which received bipartisan support. The bill was signed by the governor June 13, 2013, as L.2013, c. 65. This new law, and the NJLRC Final Reports, concern four separate articles of the Uniform Commercial Code. Article 1 contains general Uniform Commercial Code provisions, Article 4A pertains to funds transfers and supersedes a previously enacted NJLRC Report, Article 7 pertains to documents of title, and Article 9 pertains to secured transactions and supersedes a previously enacted NJLRC Report.

### **Bills Introduced Based on NJLRC Work:**

In addition to the five NJLRC projects enacted by the Legislature in 2013, the following is a list of 12 NJLRC projects that were the subject of bills introduced during the 2012 - 2013 Legislative session, or represent subject areas on which the NJLRC provided information and support to the Legislature:

- Adverse Possession
- Criminal Code Causation
- Durable Power of Attorney
- Effect of Abstentions
- General Repealer
- Revised Uniform Limited Liability Company Act
- New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act
- New Jersey Determination of Death Act
- Residential Mortgage Satisfaction Act
- Standard Form Contracts
- Uniform Trust Code
- Uniform Military and Overseas Voters Act

### **The NJLRC Would Like to Thank:**

In addition to the individuals named elsewhere in this Annual Report, the Commission would like to extend its thanks to the following individuals and organizations for their valuable suggestions, input and support for various projects on which the NJLRC worked in 2013:

Administrative Office of the Courts, New Jersey

Richard Alampi, Executive Director, New Jersey Veterinary Medical Association

David Alexander, Ph.D., Director, New Jersey Division of the Deaf and Hard of Hearing

American Veterinary Medical Association

Joseph Amoroso, Director, New Jersey Division of Disability Services

Thomas Anderson, Esq., Legislative Counsel, Office of Legislation, United States Coast Guard, U.S. Department of Homeland Security

Paul Axel-Lute, Deputy Director & Collection Development Librarian, Rutgers School of Law – Newark

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Michael Belitzky, National Marine Manufacturers Association

Vera Bergelson, Professor, Rutgers School of Law - Newark

Genevieve Boehm Clifton, Manager, New Jersey Department of Transportation Office of Maritime Resources

Richard Brown, Sergeant, New Jersey State Police Marine Services and State Police Liaison to New Jersey Boat Regulation Commission

Valerie Brown, Esq., Valerie Brown, Esq., LLC, independent lobbyist

Michael Buncher, Assistant Public Defender, New Jersey Office of the Public Defender

Esther Canty-Barnes, Professor and Director of the Special Education Clinic, Rutgers University School of Law – Newark

Patricia E. Carney, Esq., New Jersey Council of Collaborative Practice Groups

Ronald Chen, Dean, Rutgers School of Law – Newark

Christine Clarke, concerned citizen

Michael Closen, Esq., Professor Emeritus, The John Marshall Law School

Constitutional Officers Association of New Jersey

Kristin M. Corrado, Esq., Passaic County Clerk, Constitutional Officers Association of New Jersey

D. Scott Croft, Assistant Vice President of Public Relations, Boat Owners Association of the United States

Melissa Danko, Executive Director, Marine Trades Association of New Jersey

Bernice Davis, Executive Assistant, New Jersey Commission for the Blind and Visually Impaired

Anthony DeLise, Ph.D., United States Equestrian Federation

Larry DesRochers, MD, FACEP, New Jersey Chapter of the American College of Emergency Physicians

Joseph M. Donegan, Esq., Scarinci Hollenbeck, LLC, Uniform Law Commissioner for New Jersey

Rebecca Donington, Office of Legal and Regulatory Affairs, New Jersey Motor Vehicle Commission

Edward Eastman, Esq., Executive Director, New Jersey Land Title Association

Barry Evenchick, Esq., Walder, Hayden, and Brogan, P.A., Uniform Law Commissioner for New Jersey

David Ewan, Esq., New Jersey Land Title Association

Gerard J. Felt, Esq., Pressler and Pressler, LLP

Cindy Fine, Esq., Education Law Center, Volunteer Attorney

Elaine Flynn, Middlesex County Clerk, Constitutional Officers Association of New Jersey – Clerks and Registers, Section Chief

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Timothy Franco, P.O. President, New Jersey Police Traffic Officers Association

M. Claire French, Monmouth County Clerk

Daniel Frye, Ph.D., Executive Director, New Jersey Commission for the Blind and Visually Impaired

Rita Marie Fulginiti, Cape May County Clerk

Pamela E. Gardner, Hudson County Register

Pamela Gaston, Executive Assistant 3, New Jersey Commission for the Blind and Visually Impaired

Richard E. Gercak, R/C, Chairman, Government and Partner Relations Committee, United States Power Squadrons

Lorri Ghio, New Jersey Commission for the Blind and Visually Impaired

Michael Goad, Esq., Chief and Legislative Counsel, Office of Legislation, United States Coast Guard, U.S. Department of Homeland Security

Stuart P. Green, Professor, Rutgers School of Law - Newark

Edward Harrison, Commissioner, New Jersey Boat Regulation Commission and President of Baywood Marina

Kristi Henderson, DVM, Assistant Director, Scientific Activities, American Veterinary Medical Association

Bob Heym, Reference Law Librarian, New Jersey State Law Library

Patrick Hobbs, Dean, Seton Hall University School of law

Philip Hopkins, Deputy New Jersey Attorney General and Counsel to the New Jersey Boat Regulation Commission

International Association of Collaborative Professionals

Raymond Jacobs, Lieutenant, New Jersey State Police, Assistant Bureau Chief and Boating Law Administrator

John P. Joergensen, Associate Dean for Information Resources/Professor of Law, Rutgers School of Law – Newark

Talia L. Katz, JD, Executive Director, International Academy of Collaborative Professionals

Chrissey Ladd, Consultant - Notary practice

Legal Services of New Jersey

Caryl W. Leightman, Esq., New Jersey Council of Collaborative Practice Groups

Ruth Lowenkron, PhD., Esq., Education Law Center, Senior Attorney

Susan Lyons, Reference Librarian/Associate Professor, Rutgers Law School

Howard Manly, Government and Partner Relations Committee/Citizen Corps Liaison, United States Power Squadrons

Raymond P. Martinez, Chair and Chief Administrator, New Jersey Motor Vehicle Commission

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Peter J. Mazzei, Manager OLS Library Services, Office of Legislative Services

Mary M. McManus-Smith, Esq., Senior Attorney, Legal Services of New Jersey

David McMillin, Esq., Assistant General Counsel, Legal Services of New Jersey

Shireen B. Meistrich, L.C.S.W., New Jersey Council of Collaborative Practice Groups

Deborah Mercer, New Jersey Collections Librarian, New Jersey State Library

David J. Meshulam, P/D/C, AP Law Officer, Liaison to Boating Clubs, and Marketing and Public Relations Committee Member for District 4 of United States Power Squadrons

Deirdre M. Naughton, Esq., Director, Office of Professional & Governmental Services, Administrative Office of the Courts

New Jersey Council of Collaborative Practice Groups

New Jersey Hospitals Association

New Jersey Law Librarians Association

New Jersey Motor Vehicle Commission

New Jersey Police Traffic Officers Association

New Jersey State Bar Association (Including: the Board of Trustees, the Legislative Committee, the Family Law Section and the Dispute Resolution Section)

New Jersey State Library

New Jersey Veterinary Medical Association

Jessica Oppenheim, Director, Criminal Justice Advocacy Program, The Arc of New Jersey

Stephen Orlofsky, Esq., Blank Rome, LLC, Uniform Law Commissioner for New Jersey

Dianne E. Oster, Serials/GovDocs Librarian, Rodino Archivist, Seton Hall University Law Library

David Patnaude, President, New Jersey Boat Owners Association and of New Jersey Performance Powerboat Club, and Vice President – Marine Client Services Manager at Bank of America

Mary S. Pence, Esq., Feldesman, Tucker, Leifer, Fidell, LLP

Rosemarie Peters, Monmouth County Clerk, Constitutional Officers Association of New Jersey

Linda L. Piff, Esq., New Jersey Council of Collaborative Practice Groups

Maria Pinho, New Jersey Division of Revenue and Enterprise Services; Integrated Registry, Contract & Support Bureau

Anna Maria Pittella, Esq., New Jersey Council of Collaborative Practice Groups

Joanne Rajoppi, Union County Clerk and President, IACREOT

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Angel Ramos, PhD., Superintendent - Marie Katzenbach New Jersey School for the Deaf

Patricia Ratner, Director, New Jersey Horse Council

Cheryl Resnick-Crick, Coordinator, Family Advocacy and Advocacy Services, The Arc of New Jersey

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

William Roeder, Executive Director, New Jersey State Board of Medical Examiners

Kersten Roehsler, President, Marine Trades Association of New Jersey

Frank Scheick, Manager, New Jersey Commission for the Blind and Visually Impaired

Lorraine Senerchia, Hudson County Deputy Register

D. Todd Sidor, Esq., Director of Government Affairs, New Jersey State Bar Association

Rayman Solomon, Dean, Rutgers School of Law - Camden

John Sparano, Manager, CDL Coordinator, Driver Management Bureau, New Jersey Motor Vehicle Commission

Marcus Stabile, Manager, New Jersey Commission for the Blind and Visually Impaired

Christina W. Strong, Esq., Law Office of Christina Strong

Kate Tasch, Administrative Practice Officer, Regulatory and Legislative Affairs, New Jersey Motor Vehicle Commission

Elizabeth Thompson, Drug Policy Alliance

Randy Thompson, Director of Public Affairs, New Jersey Association of Mental Health and Addictions Agencies, Inc.

Carolyn Torre, RN, MA, APN, Director, Regulatory Affairs, New Jersey State Nurses Association

Alice Tulecki, New Jersey Notary Public Association, President

Jeffrey D. Urbach, CPA/ABV/CFF, Urbach & Avraham, CPAs LLP, New Jersey Council of Collaborative Practice Groups

John Walsh, Coordinator of Vocational Rehabilitation Services, New Jersey Commission for the Blind and Visually Impaired

Virga Webb, Administrative Assistant, Hudson County Register

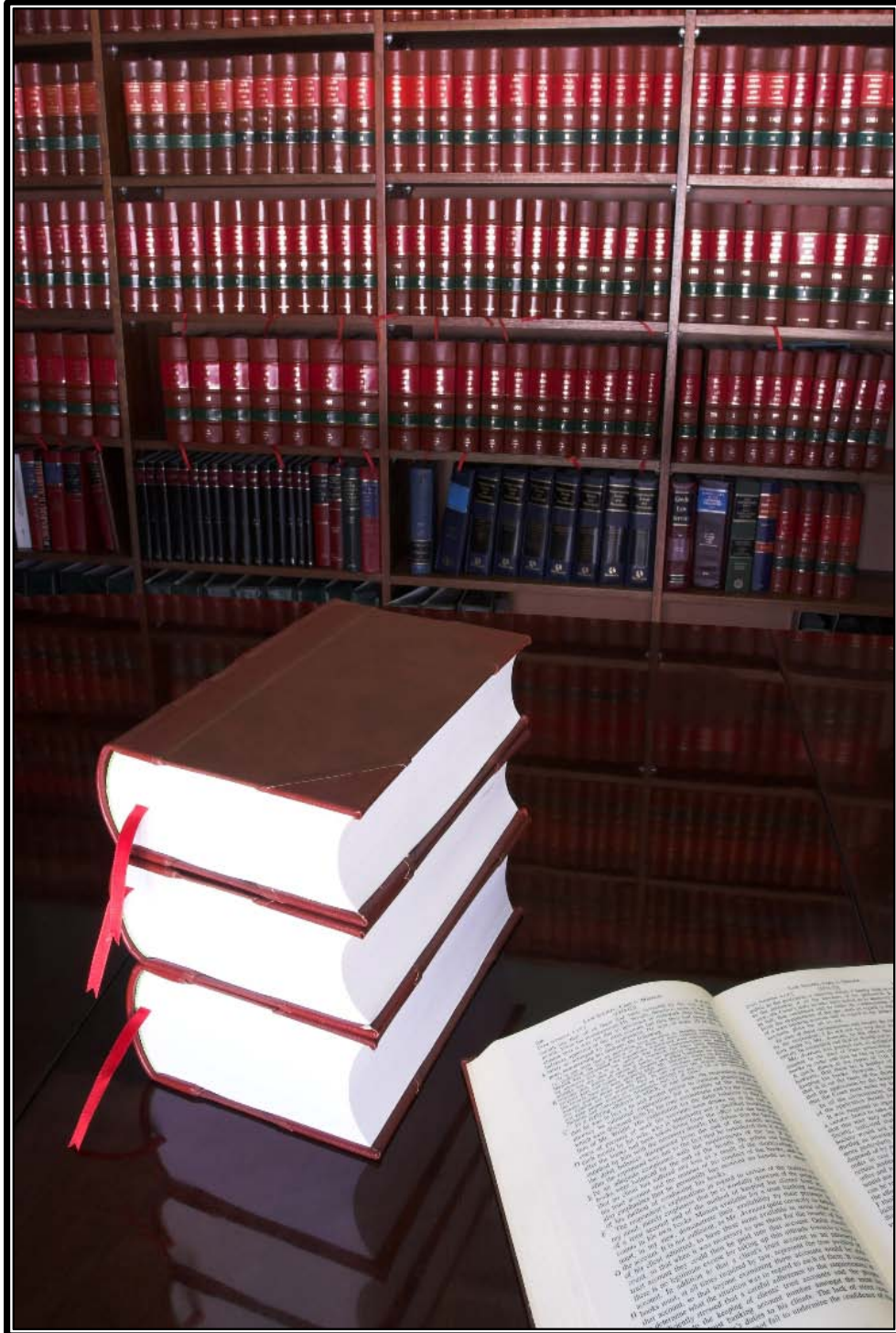
Reid K. Weisbord, Vice Dean, Rutgers School of Law – Newark

Joseph Young, Esq., Executive Director, Disability Rights New Jersey

The NJLRC apologizes for any inadvertent omissions from this list.

**Clarify****Simplify****Remedy**

## 2. – Members and Staff of the NJLRC in 2013





## **2. – Members and Staff of the NJLRC in 2013**

### **The members of the Commission are:**

Vito A. Gagliardi, Jr., Chairman, Attorney-at-Law

Albert Burstein, Attorney-at-Law

Andrew O. Bunn, Attorney-at-Law

Hon. Virginia Long, Justice (Retired)

Nicholas P. Scutari, Chairman, Senate Judiciary Committee, Ex officio

Peter J. Barnes III, Chairman, Assembly Judiciary Committee, Ex officio

Patrick Hobbs, Dean, Seton Hall Law School, Ex officio

Represented by Professor Ahmed I. Bulbulia

John J. Farmer, Jr., Dean, Rutgers School of Law – Newark, Ex officio

Represented by Professor Bernard Bell

Rayman Solomon, Dean, Rutgers School of Law - Camden, Ex officio,

Represented by Grace C. Bertone, Attorney-at-Law

### **The Staff of the Commission is:**

Laura C. Tharney, Executive Director

Jordan R. Goldberg, Counsel

Jayne J. Johnson, Counsel

Vito J. Petitti, Counsel

Linda Woodards-French, Executive Assistant

Victoria L. O'Connor, Legislative Law Clerk

John M. Cannel, Retired, "Reviser of Statutes"

The work identified in this Annual Report also includes the contributions of Staff members Steven J. Brizek, Counsel, and Marna L. Brown, Counsel, both of whom retired in 2013, and of law students Katherine Bianco, Uchechukwu Enwereuzor, and David Liston, all of whom concluded their terms with the Commission in 2013.

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### 3. – History and Purpose of the Commission

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### **3. – History and Purpose of the Commission**

New Jersey has a tradition of law revision. The first Law Revision Commission was established in 1925 and produced the Revised Statutes of 1937. Since the Legislature intended that the work of revision and codification continue after the enactment of the Revised Statutes, the Law Revision Commission continued in operation until 1939. After that time, the functions of the NJLRC were transferred to a number of successor agencies.

In 1985, the Legislature enacted 1:12A-1 et seq., effective January 21, 1986, to transfer the functions of statutory revision and codification to a newly created NJLRC in order to provide for a “continuous review of the statutory law of the State.” N.J.S. 1:12A-1, Introductory Statement. The Commission began work in 1987 and has, since that time, filed 129 Reports with the Legislature, 47 of which have been enacted into law.

The NJLRC’s statutory mandate is to “promote and encourage the clarification and simplification of the law of New Jersey and its better adaptation to social needs, secure the better administration of justice and carry on scholarly legal research and work.” N.J.S. 1:12A-8. It is the duty of the Commission to conduct a continuous review of the general and permanent statutes of the state, and the judicial decisions construing those statutes, to discover defects and anachronisms. *Id.* The NJLRC is also called upon to prepare and submit to the Legislature bills designed to remedy the defects, reconcile the conflicting provisions found in the law, clarify confusing provisions and excise redundancies. *Id.* In addition, the Commission is directed to maintain the statutes in a revised, consolidated and simplified form. *Id.*

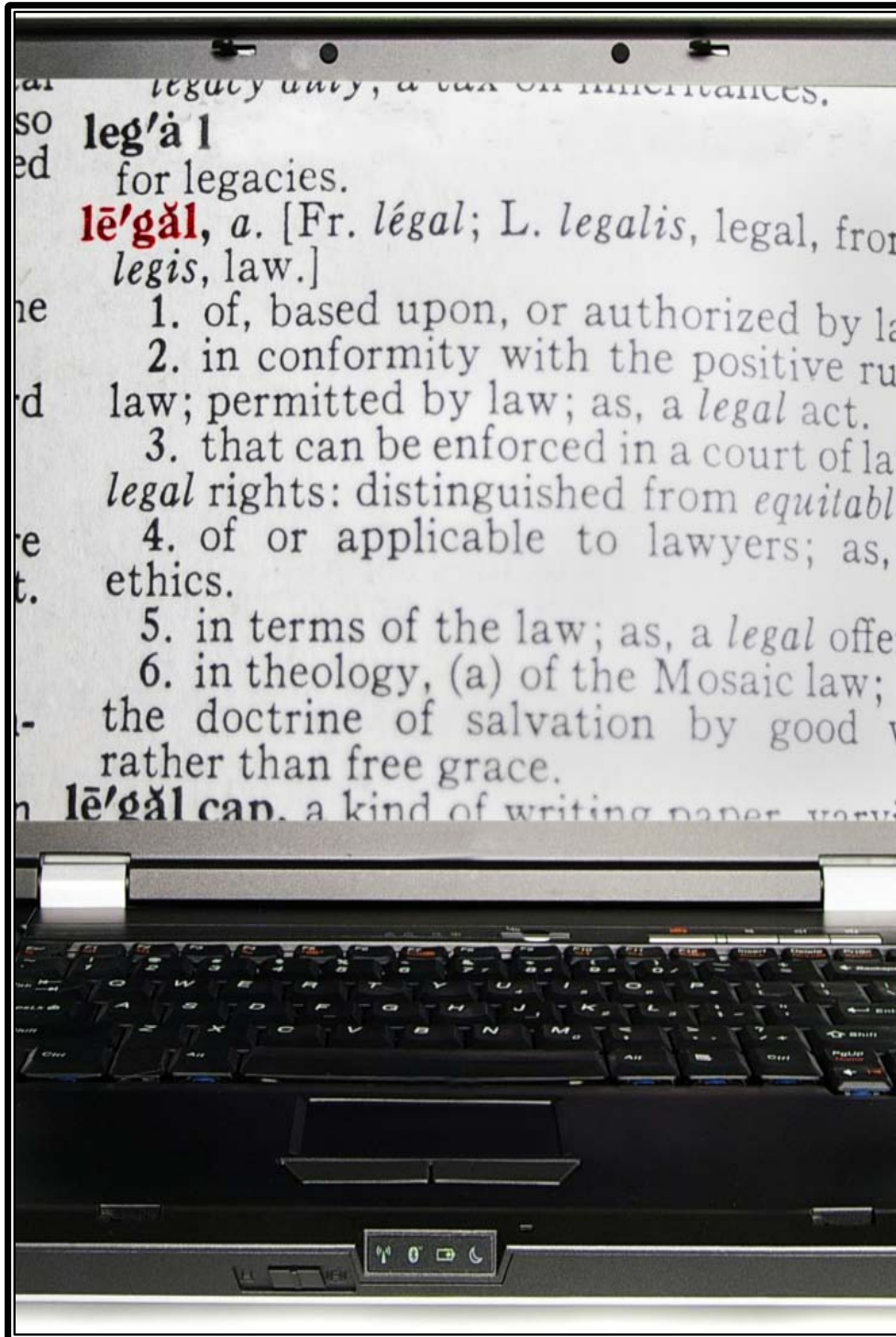
In compliance with its statutory obligations, the NJLRC considers recommendations from the American Law Institute, the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws), “other learned bodies, and from judges, public officials, bar associations, members of the bar and from the public generally.” *Id.*

To carry out its work, the NJLRC consists of nine Commissioners including the Chairman of the Senate Judiciary Committee, the Chairman of the Assembly Judiciary Committee, designees of the Deans of New Jersey’s three law schools, and four attorneys admitted to practice in New Jersey (two appointed by the President of the Senate – no more than one of whom shall be of the same political party, and two appointed by the Speaker of the General Assembly – no more than one of whom shall be of the same political party). N.J.S. 1:12A-2. The members of the Commission serve without compensation and all have declined to be reimbursed for the expenses that they incur in the performance of their duties, although the statute permits such reimbursement. N.J.S. 1:12A-5. The Staff of the Commission is comprised of a mix of full-time and part-time employees including a full-time Executive Director, one full-time Counsel, two part-time Counsel, a part-time Executive Assistant, and a part-time Legislative Law Clerk.

Once a project begins, the Commission examines New Jersey law and practice, and, when appropriate, the law of other jurisdictions. Throughout the drafting process, the Commission also seeks input from individuals and organizations familiar with the practical operation of the law and the impact of the existing statutes. When the preliminary research and drafting is finished, the Commission issues a Tentative Report that it makes available to the public for formal comments. The Commission reviews all comments received, and incorporates them into the Tentative Report as appropriate. When a revision is completed, a Final Report and Recommendation is prepared and submitted to the New Jersey Legislature for consideration.

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its projects, which are widely distributed to interested persons and groups. Since 1996, the Commission has maintained a website for the purpose of making its projects readily available to the public.

#### 4. – Enacted Reports and NJLRC Case and Journal References



#### **4. – Enacted Reports and NJLRC Case and Journal References**

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 43 bills based upon 47 Final Reports and Recommendations of the Commission. The projects enacted since 2010 are:

##### **2013**

- *Pejorative Terms* (L.2013, c.103) – The Report proposed elimination of demeaning, disrespectful, and archaic terminology used in the New Jersey statutes when referring to persons with developmental, cognitive or psychiatric disabilities.
- *Uniform Commercial Code – Article 1 – General Provisions* (L.2013, c. 65) – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.
- *Uniform Commercial Code – Article 4A – Funds Transfers* (L.2013, c. 65) – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the law since 4A does not govern a fund transfer any part of which is governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds requested by a consumer to a person located in a foreign country that is initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. Without the modification to Article 4A, when the federal law changed in February of 2013, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, and would not have been covered by either law.
- *Uniform Commercial Code – Article 7 – Documents of Title* (L.2013, c. 65) – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal and international levels.
- *Uniform Commercial Code – Article 9 – Secured Transactions* (L.2013, c. 65) – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements where the property is not real estate. These arrangements are the basis of an important part of commercial finance and many involve interstate transactions, so it is important that the state laws governing them are as nearly uniform as possible. The most significant change proposed concerns specification of the name of debtors who are natural persons.

##### **2012**

- *New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act* (L. 2012, c.36) – The Report proposed enactment of a Uniform Law Commission Act, revised for use in New Jersey, to provide a uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families.

- *Revised Uniform Limited Liability Company Act* (L. 2012, c.50) – The Report proposed enactment of a revised Uniform Law Commission Act that permits the formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership tax treatment.

## 2011

- *Married Women's Property* (L.2011, c.115) – The Report proposed the elimination from the statutes of laws enacted between the mid 19th century and the early 20th century in order to alter the old common law rules that limited a married woman's legal capacity and power to own and control property. While these laws served a purpose when enacted, they came to be viewed as demeaning relics.
- *New Jersey Trade Secrets Act* (L. 2011, c. 161) – The Report proposed the enactment of a Uniform Law Commission Act that codifies the basic principles of common law trade secret protection, preserving the essential distinctions from patent law and the remedies for trade secret misappropriation as developed in case law.
- *Title Recordation* (L.2011, c.217) – The Report recommended the revision of the statutes pertaining to the recording of title documents following the enactment of the federal Electronic Signatures in Global and National Commerce Act (E-sign), 15 U.S.C. §7001 *et seq.*, and New Jersey's enactment of the Uniform Electronic Transactions Act (UETA), L.2001, c.116; it required the acceptance of electronic alternatives to paper documents.

## 2010

- *Construction Lien Law* (L.2010, c.119) – The Report recommended the revision of the Construction Lien Law to address concerns regarding the statute's residential construction provisions, define terms undefined by the statute, clarify imprecise language, and revise statutory provisions that conflict with industry practice and are no longer workable or desirable.

## Historical Enactments:

The remaining projects enacted since the Commission began work are:

- Anatomical Gift Act (L.2001, c.87)
  - Cemeteries (L.2003, c.261)
  - (Uniform) Child Custody Jurisdiction and Enforcement Act (L.2004, c.147)
  - Civil Penalty Enforcement Act (L.1999, c.274)
  - Court Names (L.1991, c.119)
  - Court Organization (L.1991, c.119)
  - Criminal Law, Titles 2A and 24 (L.1999, c.90)
  - (Uniform) Electronic Transactions Act (L.2001, c.116)
  - Evidence (L.1999, c.319)
  - (Uniform) Foreign-Money Claims Act (L.1993, c.317)
  - Intestate Succession (L.2001, c.109)
  - Juries (L.1995, c.44)
  - Lost or Abandoned Property (L.1999, c.331)
  - Material Witness (L.1994, c.126)
-

- (Uniform) Mediation Act (L.2004, c.157)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Probate Code (L.2001, c.109)
- (Uniform) Prudent Management of Institutional Funds Act (L.2009, c.64)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999, c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 – Professions (L.1999, c.403)
- Uniform Commercial Code Article 2A – Leases (L.1994, c.114)
- Uniform Commercial Code Article 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code Article 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code Article 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code Article 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code Article 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

### **New Jersey Cases that Mention the NJLRC:**

The following is a list of New Jersey cases in which the New Jersey Law Revision Commission is mentioned:

- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)
- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
- *New Jersey Div. of Youth and Family Services v. A.P.*, 408 N.J. Super 252 (App. Div. 2009)
- *State v. Broom-Smith*, 406 N.J. Super. 228 (App. Div. 2009)
- *Seaboard Towers Development Co., LLC v. AC Holding Corp., II*, 2008 WL 2340016 (App. Div. 2008)
- *Patel v. 323 Cent. Ave. Corp.*, 2008 WL 724052 (App. Div. 2008)
- *Alampi v. Pegasus Group, L.L.C.*, 2008 WL 140952 (App. Div. 2008)
- *Michael J. Wright Const. Co., Inc. v. Kara Homes, Inc.*, 396 B.R. 131 (D.N.J. 2008)
- *Loder v. Neppi*, 2007 WL 4118319 (App. Div. 2007)
- *Semencz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebro-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)

- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (Tax 1999)
- *Prant v. Sterling*, 332 N.J. Super. 369 (Ch. Div. 1999)
- *Wingate v. Estate of Ryan*, 149 N.J. 227 (1997)
- *State v. Storm*, 141 N.J. 245 (1995)

### Journal Articles that Mention the NJLRC:

The following is a list of Journal articles in which the New Jersey Law Revision Commission is mentioned:

- Marna L. Brown, *State of New Jersey Law Revision Commission: Final Report Relating to the Uniform Interstate Depositions and Discovery Act*, 37 SETON HALL LEGIS. J. 241 (2013)
- Keith P. Ronan, *Navigating the Goat Paths: Compulsive Hoarding, or Collyer Brothers Syndrome, and the Legal Reality of Clutter*, 64 RUTGERS L. REV. 235 (2011)
- Andrew A. Schwartz, *Consumer Contract Exchanges and the Problem of Adhesion*, 28 YALE J. ON REG. 313 (2011)
- Thomas J. Walsh, *Advancing the Interests of South Africa's Children: A Look at the Best Interests of Children under South Africa's Children's Act*, 19 MICH. ST. J. INT'L L. 201 (2011)
- Regina M. Spielberg, *The Powerful Power of Attorney*, 265-AUG N.J. LAW. 41 (2010)
- Allen A. Etish, *Is History About to Repeat Itself?* 261-DEC N.J. LAW. 5 (2009)
- Shmuel I. Becher, *Asymmetric Information in Consumer Contracts: The Challenge that is yet to be Met*, 45 AM. BUS. L.J. 723 (2008)
- Ronald L. Carlson, *Distorting Due Process for Noble Purposes: The Emasculation of America's Material Witness Laws*, 42 GA. L. REV. 941 (2008)
- Edith R. Warkentine, *Beyond Unconscionability: The Case for Using "Knowing Assent" as the Basis for Analyzing Unbargained-for Terms in Standard form Contracts*, 31 SEATTLE U. L. REV. 469 (2008)
- Steven J. Eisenstein & Kevin J. O'Connor, *Enforceability of Oral Agreements and Partial Writings for the Sale of Land under the Revised Statute of Frauds*, 250-FEB N.J. LAW. 37 (2008)
- Joseph M. Perillo, *Neutral Standardizing of Contracts*, 28 PACE L. REV. 179 (2008)
- Darryl K. Brown, *Democracy and Decriminalization*, 86 TEX. L. REV. 223 (2007)
- Joseph A. Colquitt, *Using Jury Questionnaires; (Ab)using Jurors*, 40 CONN. L. REV. 1 (2007)
- Russell Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. CHI. L. REV. 1203 (2003)
- James R. Maxeiner, *Standard-Terms Contracting in the Global Electronic Age: European Alternatives*, 28 YALE J. INT'L L. 109 (2003)
- David A. Szwak, *Uniform Computer Information Transactions Act [U.C.I.T.A.]: The Consumer's Perspective*, 63 LA. L. REV. 27 (2002)
- Russell Korobkin, *Empirical Scholarship in Contract Law: Possibilities and Pitfalls*, 2002 U. ILL. L. REV. 1033 (2002)
- Adam F. Scales, *Against Settlement Factoring? The Market in Tort Claims has Arrived*, 2002 WIS. L. REV. 859 (2002)
- Margaret L. Moses, *The Jury-Trial Right in the UCC: On a Slippery Slope*, 54 SMU L. REV. 561 (2001)
- *Winning Websites*, 207-FEB N.J. LAW 55 (2001)
- William H. Manz, *Internet Web Sites Offer Access to Less Expensive Case Law and Materials not Offered Commercially*, 72-DEC N.Y. ST. B.J. 26 (2000)



- Clemens Pauly, *The Concept of Fundamental Breach as an International Principle to Create Uniformity of Commercial Law*, 19 J.L. & COM. 221 (2000)
  - R. J. Robertson, Jr., *The Illinois Electronic Commerce Security Act: A Response to Martin Behn*, 24 S. ILL. U. L.J. 473 (2000)
  - John J.A. Burke, *Contract as Commodity: A Nonfiction Approach*, 24 SETON HALL LEGIS. J. 285 (2000)
  - R. David Whitaker, *Rules Under the Uniform Electronic Transactions Act for an Electronic Equivalent to a Negotiable Promissory Note*, 55 Bus. Law. 437 (1999)
  - Larry T. Garvin, *The Changed (and Changing?) Uniform Commercial Code*, 26 FLA. ST. U. L. REV. 285 (1999)
  - Richard F. Dole, Jr., *The Essence of a Letter of Credit Under Revised U.C.C. Article 5: Permissible and Impermissible Nondocumentary Conditions Affecting Honor*, 35 HOUS. L. REV. 1079 (1998)
  - Fred H. Miller, *Realism Not Idealism in Uniform Laws—Observations from the Revision of the UCC*, 39 S. TEX. L. REV. 707 (1998)
  - Margaret L. Moses, *The Uniform Commercial Code Meets the Seventh Amendment: The Demise of Jury Trials under Article 5?*, 72 IND. L.J. 681 (1997)
  - Albert J. Rosenthal, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (1997)
  - Nancy S. Marder, *Deliberations and Disclosures: A Study of Post-Verdict Interviews of Jurors*, 82 IOWA L. REV. 465 (1997)
  - John J.A. Burke, *New Jersey's New Material Witness Statute: Balancing the Rights of Prosecutors, Defendants, and Material Witnesses in Criminal Cases*, 19 SETON HALL LEGIS. J. 475 (1995)
  - Fred H. Miller & Robert T. Luttrell, *Local Comments to Uniform Laws: A Winning Combination*, 48 CONSUMER FIN. L.Q. REP. 60 (1994)
  - Shirley S. Abrahamson & Robert L. Hughes, *Shall we Dance? Steps for Legislators and Judges in Statutory Interpretation*, 75 MINN. L. REV. 1045 (1991)
  - John J.A. Burke & John M. Cannel, *Leases of Personal Property: A Project for Consumer Protection*, 28 HARV. J. ON LEGIS. 115 (1991)
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## 5. – Final Reports and Recommendations 2013



## 5. – *Final Reports and Recommendations 2013*

### Fee Discrepancies

In November 2013, the Commission released a Revised Final Report updating an Earlier Commission project. Back in June of 1990, the Commission released a Final Report explaining the discrepancies between fees mandated by N.J.S. 22A:2-29 and those in N.J.S. 56:1-3, N.J.S. 56:1-7, and N.J.S. 56:3-16 had been brought to the Commission's attention. The Commission verified the discrepancies and resultant problems: 1) practitioners did not know which fees to pay, and 2) fee-collecting officials and practitioners wasted resources responding to incorrectly paid fees and repaying fees, respectively.

The object and policy of N.J.S. 22A:2-29 is to establish a uniform schedule of fees to be charged by all county clerks for the rendering of services in the performing of their official duties. In order to eliminate conflicting fees, two statutes should be altered to eliminate references to the fee amount in sections other than N.J.S. 22A:2-29. A third issue addressed in the Commission's earlier Report has since been resolved by subsequent revisions to N.J.S. 22A:2-29, and no further modification is proposed. In the Commission's initial Report, the statutory language was changed to require payment of "the fee provided by law". In this revised Report, the language calls for the payment of "the fee provided in N.J.S. 22A:2-29" so that individuals unfamiliar with the fee provision can more easily locate it. In November 2013, the Commission approved the Revised Final Report updating its earlier work.

*"The law is in constant evolution. The task of the NJLRC is to provide policy makers with tools to meet the challenges."*

*Albert Burstein, Esq.,  
Archer & Greiner, P.C.*

### Mortgage Recording

The Commission approved a Final Report on Mortgage Recording in September 2013. The Report recommends a limited solution to the serious problems that flow from the failure to record assignments of mortgages. Over the past years, commercial practices in regard to mortgages have changed. The business that initiates the mortgage may well transfer it immediately and, typically, a mortgage will be transferred a number of times thereafter. These transfers are seldom recorded. The first filing serves to protect the priority of the mortgage, but, in itself, does not identify the true beneficial owner of the mortgage. The property owner makes payments to the mortgage servicer that pays the proper party. The land records do not indicate who currently is owed the debt secured by the mortgage; the property owner may not know, but the servicer must have that information.

The failure to record can cause problems in several ways. One problem is the conflict with traditional chain of title expectations. The most common example is in regard to satisfaction of mortgages. A property owner who seeks to pay off the mortgage gets a statement of the balance and, when it is paid, gets a satisfaction of mortgage. Both may be signed by the servicer. Anyone examining the land title may see a mortgage recorded in the name of one party and a satisfaction signed by another. Title insurers have come to accept this anomaly because there will be few situations where the true mortgage owner, whoever it is, has not been paid. However, this discrepancy does cause an insecurity in land title foreign to our expectations.

The more severe problem concerns authority to foreclose the mortgage, as illustrated by recent cases. Only the party with the authority to enforce the debt may bring an action to foreclose the mortgage. The party holding the note secured by the mortgage usually holds it as trustee for investors. It may have little actual financial interest in the mortgage. The mortgage is serviced by a separate party. The servicer is the party that is in a position to know whether the mortgage has been paid or whether it is in default. Normally, neither of these parties is the holder of the mortgage as indicated by the land records. As a result, the court hearing the foreclosure must determine whether the plaintiff has the authority to bring the action.

The Commission has examined this problem for approximately two years. Interested parties representing County Clerks, land title interests, MERS, banking interests, the foreclosure bar, and others, have expressed their positions at Commission meetings and through meetings with Staff. There was general agreement that the current situation presents problems; there was less agreement as to possible solutions. The Commission considered a number of proposals that would supplement the current recording system for mortgages. The purpose of each was to allow public records to reflect more information about mortgages so that land title and foreclosure issues would be solved. Each proposal presented real, serious, practical problems.

The Final Report embodies a more limited solution. There are difficulties in proving that the plaintiff is the proper party to foreclose. This problem can be solved by a firm rule that bases the right to foreclose on the land records. Only the party that the county recording officer's records show to be the mortgagee may bring a foreclosure action. Mortgage lenders can comply with this limitation. While it is impractical to record all assignments for all mortgages, recording an assignment or power of attorney for the very few mortgages that are foreclosed can be accomplished. The proposal provides an escape valve for exceptional cases; a party can establish its ownership of the mortgage in a civil action.

The problem with satisfaction of mortgages arises when the mortgagee as reflected in the county land records and the party that executes the satisfaction are not the same. The solution is to tighten the laws on the duty to prepare a document showing that the mortgage has been satisfied. It must be clear that only the record mortgagee is the party that must sign the satisfaction of mortgage. In that way, the chain of title will be clear; the records will show who held the mortgage and that that party has declared it satisfied. If the party recorded as mortgagee no longer exists, an earlier Commission proposal, The Residential Mortgage Satisfaction Act, would provide a remedy.

An additional issue is addressed by the Report. Anecdotally, there have been rare instances where a criminal writes to mortgage debtors claiming to be the new servicer, signing the letter as the new servicer and forging a signature as the old servicer. If the mortgage debtor pays the thief, there is a question of whether he still owes a payment to the real mortgage holder. There is no case law on this subject in New Jersey. The Report proposes a legislative solution.

### **New Jersey Certificate of Titles for Vessels Act**

The Final Report recommending adoption of the New Jersey Certificate of Title for Vessels Act (NJCOTVA) was released in July 2013. NJCOTVA is based on the Uniform Certificate of Title for Vessels Act (UCOTVA) which provides a comprehensive system of ownership certification for watercraft. UCOTVA was approved and recommended for enactment by the Uniform Law Commission (ULC) in July 2011. The major objectives of NJCOTVA, like the Uniform Act, are to: (i) deter and impede theft; (ii) facilitate ownership transfers; and (iii) provide certain consumer protections for individuals purchasing or acquiring interest in an undocumented vessel through a branding requirement.

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The branding requirement is a significant feature of NJCOTVA which, like the Uniform Act, requires that if the integrity of a vessel's hull has been compromised by a casualty event, the owner or insurer must, prior to selling the vessel, either note the fact on the certificate of title or apply for a new certificate that indicates that the vessel is "hull damaged." *ULC, Certificate of Title for Vessels Act, Prefatory Note, page 2.* Without the branding requirement, vessels with hidden hull damage can be resold after cosmetic repairs without disclosure of the damage. *Id.* This problem can be significant after a major storm, like Sandy, or other widespread casualty. *Id.* Two processes for branding titles are available, one for owners of record, and a second supervening process for insurers. *See id.* To maintain simplicity, however, the two processes each yield the same, single brand: "hull-damaged." *See id.*

New Jersey is among the 33 states that already require a certificate of title for certain vessels. *See ULC, Certificate of Title for Vessels Act Summary.* Vessel titling is administered by the state's Motor Vehicle Commission pursuant to the Boat Ownership Certificate Act (BOCA), *N.J.S. 12:7A-1 to -29.* Adoption of NJCOTVA would enhance New Jersey's current titling system and the likelihood that the U.S. Coast Guard will approve the State's system. *See ULC, Certificate of Title for Vessels Act Summary.*

NJCOTVA mirrors most UCOTVA provisions, including the branding requirement, and the content, creation and cancellation of the certificate of title. *ULC, Certificate of Title for Vessels Act, Section 6, 8, 9.* NJCOTVA differs from UCOTVA in select provisions where NJCOTVA incorporates current New Jersey standards. For example, the definition for vessels in the Uniform Act excepts from titling "watercraft less than

16 feet in length and propelled solely by sail, paddle, oar, or an engine of less than 10 horsepower" while NJCOTVA incorporates the current standard under BOCA that excepts from titling vessels 12 feet or less length. *ULC, Certificate of Title for Vessels Act, Section 2a.31(C).* NJCOTVA also retains the current New Jersey standard allowing buyers 10 days to obtain title instead of the 20 days permitted under UCOTVA; but like the Uniform Act, NJCOTVA allows buyers "the later of the date of ownership transfer or the date on which a state becomes the state of principal use." *See ULC, Certificate of Title for Vessels Act, Section 6a; NJLRC, New Jersey Certificate of Title for Vessels Act, Section 6a.*

The definition of "state of principal use" recommended in NJCOTVA also incorporates the definition provided under BOCA into the UCOTVA definition to ensure broad coverage of watercraft present in New Jersey. Under BOCA, New Jersey currently requires titling only for "marine equipment principally used in this State," *N.J.S. 12:7A-5,* and defines "principal use within this State" as being "within this State for a period in excess of 180 consecutive days," not including the time when the vessel

was in this State for storage or repair purposes. *Id.* UCOTVA also requires titling only for vessels principally used within the state but would define "state of principal use" as "the state on whose waters a vessel is or will be used, operated, navigated, or employed more than on the waters of any other state during a calendar year." *ULC, Certificate of Title for Vessels Act, Section 2 a.(28).* The NJCOTVA recommends that if a vessel does not satisfy the uniform definition, New Jersey will be deemed the state of principal use if the vessel satisfies the prongs of the current BOCA definition. *Id.*

*"The NJLRC is a jewel in our State's crown. Independent in thought and deed, it is a legislative commission charged with a single mission - to assist New Jersey's citizens and all of the branches of government by revising and improving our statutory law so that it better addresses the evolving issues facing the State in every new era. Its role is not to make policy but only to make sure that the policies of the Legislature are most effectively carried out. It is my honor to serve on the Commission."*

*Hon. Virginia Long, Justice (Retired)*

*Fox Rothschild, LLP*

In the aftermath of Superstorm Sandy, UCOTVA would provide support to New Jersey's marine industry as it rebuilds and give additional protection to the state's boating community. The Commission seeks to advance the objectives of UCOTVA and recommends adoption of NJCOTVA in New Jersey.

### **New Jersey Declaration of Death Act**

A Final Report regarding the New Jersey Declaration of Death Act was issued in January 2013. This project was commenced in 2012 in order to evaluate whether to recommend adoption of the uniform law to the Legislature. New Jersey had already enacted the New Jersey Declaration of Death Act (NJDDA), effective in 1991, as *N.J.S. 26:6A-1 et seq.*, and all states, including New Jersey, recognize "brain death" as death. The NJDDA goes a step further than the UDDA by providing more protections and guidelines to those who make death pronouncements.

Commenters, however, suggested that New Jersey's law could be improved by revising the sections of the NJDDA that give authority to the Board of Medical Examiners and the Department of Health to regulate standards for brain death determination. This recommendation became the focus of the project, and commenters proposed specific revisions to *N.J.S. 26:6A-4*, which were used as a basis for further drafting when preparing the Final Report.

### **New Jersey Family Collaborative Law Act**

The Commission issued a Final Report regarding the New Jersey Family Collaborative Law Act in July of 2013. In 2009, the Uniform Law Commission approved for adoption in all states the Uniform Collaborative Law Act (UCLA). The UCLA was amended in 2010 and re-titled the Uniform Collaborative Law Rules/Act (UCLR/A). The UCLR/A was intended to create a uniform framework for the use of collaborative law that provides important consumer protections and enforceable privilege provisions, including explicit informed-consent requirements that will enable parties to commence the process with an understanding of the costs and benefits of participation.

Collaborative law is a voluntary, non-adversarial settlement process, in which parties, with the assistance of their lawyers (and, as appropriate, other collaborative professionals such as: financial practitioners, including certified financial planners and certified public accountants; and mental health professionals, including licensed clinical social workers, psychologists, licensed professional counselors, licensed marriage and family therapists and psychiatrists trained in collaborative law), negotiate mutually acceptable resolutions of their disputes without court involvement. The collaborative lawyers, along with their clients and other collaborative professionals, work together as a team in order to resolve the dispute.

In order to commence the process, the parties and their attorneys must agree, in writing, that they will collaborate in good faith and in a non-adversarial manner to settle their dispute, and that neither party will use the threat of going to court, or withdrawing from the process, as a means of forcing settlement or achieving a desired outcome.

The hallmark of collaborative law is the clause whereby both parties agree that each of their attorneys may not represent a party before a court or other tribunal in a proceeding related to the collaborative matter either during the collaborative law process (with certain limited exceptions not included in the draft below) or

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in the event the collaborative law process fails. This limitation of representation clause is intended to serve two purposes: to protect the parties from the pressure of settling within court-imposed timeframes and to allow attorneys to focus on dispute resolution rather than litigation tactics.

The proposed law also creates a privilege between parties and non-attorney collaborative professionals during the negotiation process, modeled after a similar privilege in the Uniform Mediation Act. At the outset of the project, commenters advised the Commission that creating an evidentiary privilege for collaborative law parties and non-party professionals was essential and should be a primary focus of a New Jersey version of the law. The uniform law creates a privilege to the benefit of the party with regard to all collaborative law communications. It also creates a privilege to the benefit of the non-party participant with regard to the communications of that non-party participant made during the collaborative law process. The proposed New Jersey version follows the uniform law approach and in doing so, includes language from similar provisions in the Uniform Mediation Act, N.J.S. 2A:23C-1 *et seq.*

Another fundamental principle of collaborative law is the mandatory disclosure and exchange of information by the parties. Full and fair disclosure is deemed by those who practice collaborative law to be a key to the success of the process. It enables the parties to develop trust and confidence in the process itself while giving the collaborative professionals the information necessary to guide the parties and help them reach a comprehensive resolution of the dispute.

In New Jersey, collaborative practice has been embraced as a successful form of dispute resolution to resolve matrimonial disputes, and the NJLRC specifically crafted its Report to allow collaborative law only for family law disputes. In 2005, even before promulgation of the uniform law, the New Jersey Supreme Court Advisory Committee on Professional Ethics issued Opinion 699, which recognized that a lawyer could participate in collaborative law without violating the Rules of Professional Conduct. The Advisory Committee had been asked to examine a perceived conflict between the traditional role of the lawyer and the requirements of the collaborative process, i.e., the lawyer's obligation to advocate for his or her client zealously and in an inherently adversarial manner, versus the collaborative law requirement that each lawyer in the collaborative process contractually limit the scope of the representation of his or her client. During the course of work on this Report, Staff was advised that nine separate organizations/associations of professionals practice collaborative law in New Jersey as members of the International Academy of Collaborative Practice (IACP). Enactment of the Report will serve to protect the participants in this process in New Jersey.

### **New Jersey Volunteer Health Practitioners Act**

A Final Report regarding the New Jersey Emergency Volunteer Health Practitioners Act was released in September 2013. The UEVHPA was drafted by the Uniform Law Commission in an expedited manner after hurricanes Katrina and Rita which struck within weeks of each other in 2005. Prior to that time, a number of states had enacted emergency management laws that permitted the waiver or modification of licensure standards for health practitioners. The vast majority of the states had also enacted the Emergency Management Assistance Compact (EMAC). EMAC allows for the deployment of licensed health practitioners employed by state and local governments to jurisdictions in which they are not licensed and allows them to provide emergency services there.

The federal government supplemented state law provisions with language allowing licensed health practitioners that it employs, on either a permanent or temporary basis, to respond to disasters and emergencies without complying with the state professional licensing requirements. Federal law also established two systems to facilitate the use of private sector health practitioners in response to emergencies.

Unfortunately, neither of those federal programs necessarily results in interstate recognition of licenses issued to volunteer health practitioners.

When hurricanes Katrina and Rita struck, the response to the resulting emergency conditions highlighted deficiencies in the federal and state systems designed to facilitate the interstate use of volunteer health practitioners. While federal and state law recognized the need for interstate licensure reciprocity, no comprehensive system existed to link the various public and private programs. The hurricanes, as other large-scale emergencies could, caused a breakdown of communications, which lead to uncoordinated and ineffective response efforts. In addition, the deployment of many volunteer health practitioners was delayed by the absence of information regarding the operation of state declarations of emergency. Concerns regarding exposure to civil liability and the availability of workers' compensation protection also inhibited the recruitment and deployment of volunteers.

The goal of the Commission is a law that facilitates the use of out-of-state health practitioners in New Jersey when they are needed here while providing appropriate protection to all parties. To that end, the uniform law was modified in response to existing New Jersey law.

### **Pejorative Terms Relating to Physical and Sensory Disabilities**

The Final Report regarding Pejorative Terms Relating to Physical and Sensory Disabilities was released in October 2013. The Report recommends eliminating offensive, demeaning, and archaic terminology that is used in New Jersey statutes when referring to persons with a physical or sensory disability. Previously, the Commission released two Final Reports dealing with pejorative terminology that referred to persons with developmental, cognitive or psychiatric disabilities. The first, in 2008, was in direct response to the amendment to Article II, Section I, Paragraph 6 of the New Jersey Constitution, and the second, in 2011, after the enactment of P.L. 2010, c. 50. Bill A-3357/S-2224, based on the Commission's 2011 Final Report, received bipartisan support and passed both houses of the Legislature unanimously. The Governor, in August 2013, signed the bill into law.

The Final Report regarding Pejorative Terms Relating to Physical and Sensory Disabilities serves as a continuation of the Commission's prior Reports regarding Pejorative Terms and was initiated at the request of special education attorneys from the Education Law Center (ELC) and the New Jersey Special Education Practitioners (NJSEP) who were concerned with the statutory references to persons with a physical disability. As with the previous Reports, the project was well received and numerous individuals and agencies provided comment, including the New Jersey Division of Disability Services; the New Jersey Division of the Deaf and Hard of Hearing; the Marie H. Katzenbach School of the Deaf; the Commission for the Blind and Visually Impaired; Disability Rights New Jersey; the Arc of New Jersey; the New Jersey Hospital Association; the State of New Jersey Department of Human Services; the New Jersey Department of Labor & Workforce Development; the Division of Vocational Rehabilitation Services; the New Jersey Association of Mental Health and Addition Agencies (NJAMHAA); the Drug Policy Alliance; and the Education Law Center.

### **Traffic on Marked Lines**

A Final Report regarding Traffic on Marked Lines was released in March 2013. This project resulted from the New Jersey Supreme Court decision in *State v. Regis*, 208 N.J. 439, (2011), addressing the issue of whether the first and second clauses of N.J.S. 39:4-88 subsection b. identify two separate, independent offenses or combine to describe a single offense. Although the words used in N.J.S. 39:4-88(b) appear plain, the manner in which the language is to be interpreted was not immediately apparent. The statute at issue, in



subsection b., presently reads as follows: “A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from that lane until the driver has first ascertained that the movement can be made with safety.” According to the Supreme Court, the consequence of this single sentence is that an individual is guilty of violating this provision if he or she fails to stay within a designated lane. *Regis*, 208 N.J. at 448. This same sentence also makes it a violation for a driver to switch lanes before determining that it is safe to do so. *Id.*

Since there was a difference of opinion among the courts that considered this issue, it was of concern that drivers responsible for following the law might not properly interpret the two independent offenses created by the one sentence in issue in N.J.S. 39:4-88 subsection b. It is vital that the language used to regulate travel is clearly drafted and can easily be interpreted by laypersons. As a result, in light of the Supreme Court’s decision in *Regis*, the Report proposes draft modifications to the language of N.J.S. 39:4-88, dividing the single subsection b. in issue into two separate subsections of the statute in order to improve clarity.

### **Uniform Commercial Code, Articles 3 and 4**

In 2002, the Permanent Editorial Board of the Uniform Commercial Code (ULC) approved changes to Article 3 (Negotiable Instruments) and Article 4 (Bank Deposits). These amendments have been adopted in only 10 states and the District of Columbia. The only commercial state to adopt them is Texas. Banking interests have never endorsed them, and there has been declining interest in their enactment over the years. Enactment of these changes is no longer a priority for the ULC. While other changes to the UCC were among this year’s target acts for adoption, this change has not been included.

Later case law made the changes in these Articles less important. Some of these changes have become controversial because of their effect on mortgage foreclosures and the ULC is expected to consider these issues in the mortgage context. In addition, there is some concern that the changes that were intended to deal with new technology may now be problematic by later changes in technology. The NJLRC decided to await further ULC recommendations before supporting these changes to Articles 3 and 4 of the Uniform Commercial Code and, by way of a Final Report released in July 2013, does not recommend that the Legislature take any action in response to the 2002 amendments to those Articles.

### **Uniform Deployed Parents Custody and Visitation Act**

In 2012, the Uniform Law Commission (“ULC”), approved the Uniform Deployed Parents Custody and Visitation Act (“UDPCVA”) for adoption in all states. The Prefatory Note explains that the UDPCVA addresses child custody and visitation issues that arise when parents are deployed in military or other national service because custody issues raised by such deployment are not “adequately dealt with in the law of most states.”

The ULC explains in its Prefatory Note that although issues of child custody and visitation are generally determined by state law, state laws differ on several issues, including the following: whether the service member is eligible for the protection of state law; whether an expedited court procedure before deployment is available for the service member; whether there will be automatic reversion to the permanent custody order upon the service member’s return from deployment; and whether the service member, without a court order, may delegate custody to a person other than the child’s non-deployed parent. A uniform law is deemed necessary because of the mobile nature of national service and the fact that the parent who is not deployed often will live in or move with the child to a state that is different than the home state of the deployed service member.

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New Jersey recently enacted a statute that addresses the concerns raised by the uniform law. Having unanimously passed both houses of the New Jersey legislature with bipartisan support, P.L. 2013, c.7, (which supplements P.L. 2004, c.147), was enacted in New Jersey earlier this year and took effect on March 26, 2013. This law concerns child custody and parenting time arrangements related to certain military service absences and addresses the same concerns addressed by the uniform law. The statutory sections affected are N.J.S. 9:2-12.1 (definitions); and N.J.S. 2A:34-65 through 2A:34-66 (initial child custody jurisdiction and exclusive, continuing jurisdiction).

New Jersey's recently enacted P.L. 2013, c. 7, addresses the concerns raised in the UDPCVA except issues that require rulemaking authority (which under New Jersey law are dealt with by court rule and not statute). Because the New Jersey statutes provide a straightforward mechanism for achieving these goals consistent with New Jersey practice, adoption of the UDPCVA is not necessary. The Commission, by way of a Final Report released in April 2013, does not recommend adoption of the UDPCVA by the New Jersey Legislature.

### **Uniform Electronic Recordation of Custodial Interrogations Act**

The Uniform Law Commission (ULC), in July, 2010, approved and recommended for enactment in all the States the Uniform Electronic Recordation of Custodial Interrogations Act (UERO CIA). The UERO CIA addresses the use of audio and/or videotaping to record law enforcement interviews of criminal suspects who are in custody. As drafted, the UERO CIA mandates only audio recordings of interrogations, leaving to the discretion of the various states and law enforcement agencies whether to require both audio and video recording of custodial interrogations.

The subject matter of the UERO CIA, its objectives, and the general nature of its prescriptions to advance those objectives, are not new to New Jersey. To the contrary, New Jersey has been at the forefront of advancing the cause sought to be served by the UERO CIA, and has done so in a well drafted, succinct, clear and easily understood Criminal Practice Rule promulgated in 2005, R. 3:17. That Rule was the product of a comprehensive investigation and consideration of the matter that culminated in the April 15, 2005 Report of the Supreme Court Special Committee on Recordation of Custodial Interrogations which recommended its adoption in the form approved verbatim by the New Jersey Supreme Court on October 14, 2005. R. 3:17 became effective on January 1, 2006 with regard to all homicide offences and on January 1, 2007 with regard to all other offenses covered by its terms.

By virtue of the several variations that each individual adopting State is allowed by the express terms of the UERO CIA, adoption of the UERO CIA would not necessarily yield the interstate benefits generally to be expected by the wide adoption of a uniform law. Instead, adoption would likely yield only the benefits that the mandate of electronic recording of custodial statements has the capacity to provide to the criminal justice system of each individual State. New Jersey's Criminal Justice System has been operating under such a mandate since it became fully operational in 2007, pursuant to R. 3:17. Further, the provisions regarding electronic recording in New Jersey fall within the scope of practice, procedure and administration promulgated by a Rule of the New Jersey Supreme Court not subject to overriding legislation. As a result, enactment of the UERO CIA is not recommended by the Commission in the Final Report released in June of 2013.

### **Uniform Principal and Income Act**

The Commission released a Revised Final Report regarding Amendments to the Uniform Principal and Income Act in July 2013. Approximately a decade earlier, on January 1, 2002, the New Jersey Legislature

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enacted a modified version of the Uniform Principal and Income Act as revised in 1997 by the Uniform Law Commission (ULC). The 2002 Act replaced the Revised Uniform Principal and Income Act adopted in 1991. *See, Assembly Banking and Insurance Committee Statement, N.J.S. 3B:19B-1.* The Act, as adopted in New Jersey, was very similar to the ULC Act, but differed in some respects.

In 2009, the ULC recommended changes to two different sections of the Act dealing with deferred compensation, annuities, and similar payments, as well as income taxes and the adoption of a new section that includes transitional provisions. While the changes are small (in comparison to the size of the Act as a whole), they are recommended as important since they are designed to address tax problems caused by the version of the law currently in effect. In an early stage of this project, the New Jersey State Bar Association supported the Commission work on the Act to incorporate the 2009 revisions.

### **Uniform Real Property Electronic Recording Act**

The Uniform Real Property Electronic Recording Act (URPERA) was approved by the Uniform Law Commission in 2005 and has been enacted in 25 states. The purpose of the URPERA, as stated in its Introduction, is to “remove any doubt about the authority of the recorder to receive and record documents and information in electronic form...Furthermore, any requirement that the document contain a signature or acknowledgment is satisfied by an electronic signature or acknowledgement. The act specifically authorizes a recorder, at the recorder’s option, to accept electronic documents for recording and to index and store those documents.”

The URPERA does not require that electronic documents be accepted for recording, but it overcomes any state law that requires a paper original. It allows electronic documents to be recorded provided the recording officer agrees and the state establishes a regulatory body to govern the form of electronic documents. Although the URPERA is limited, its enactment allows a state to take a step toward recording electronic documents without committing itself to a particular time when that recording will actually occur. Electronic documents may not yet be recorded in most of the places where the URPERA has been enacted.

The Commission’s Final Report on Title Recordation, released in 2003, provided that electronic documents (and electronic copies of paper documents) may be recorded so long as they are in the form required by regulations of the Division of Archives and Records Management. The NJLRC Report (with a few technical changes) was enacted as L.2011, c.217. As a result, New Jersey has gone beyond what is proposed by the URPERA. New Jersey no longer requires paper originals and the State has a regulatory body to establish form requirements for electronic document. New Jersey’s statutes already provide for everything allowed, but not required, by the URPERA, and in a more complete and modern fashion. As a result, the Commission does not recommend enactment of the Uniform Real Property Electronic Recording Act in the Final Report released in November 2013.

## 6. – Tentative Reports



## 6. – Tentative Reports

### Equine Activities Liability Act

A Tentative Report regarding the Equine Activities Liability Act (“Equine Act”) was released in January 2013. The Equine Act is a statutory tool designed to protect owners and operators of equine facilities from potential liability.

The Legislature determined “that equine animal activities are practiced by a large number of citizens in this State; that equine animal activities attract large numbers of residents to the State; that those activities significantly contribute to the economy...and that horse farms are a major land use which preserves open space.” *N.J.S. 5:15-1*. The Legislature also determined “that equine animal activities involve risks that are essentially impractical or impossible for the operator to eliminate; and that those risks must be borne by those who engage in those activities.” *Id.* Therefore “the allocation of the risks and costs of equine animal activities is an important matter of public policy and it is appropriate to state in law those risks that the participant voluntarily assumes for which there can be no recovery.” *Id.*

*“The NJLRC receives guidance from all three branches of our government, as well as private groups, businesses and individuals. This broad perspective gives us unique insight into the challenges and practical effects of the proposals we consider.”*

*Andrew O. Bunn, Esq.,  
DLA Piper LLP (US)*

In light of the considerable contributions to New Jersey’s economy attributable to the equine industry, the Legislature created the Equine Act to establish by statute the responsibilities and liabilities of those individuals who engage in equine animal activities and to provide that one who engages in equine activities assumes the risks involved in those activities. Under its provisions, notwithstanding New Jersey’s law regarding comparative negligence, a participant would be completely barred from suing an operator for injuries to which the participant contributed by failing to conduct himself within the limits of his abilities.

The Commission’s work in this area originated with the New Jersey Supreme Court decision in *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184, 1 A.3d 618 (2010), addressing a “latent ambiguity in the overall meaning of the [Equine Act].” The Commission’s goal is to address the court’s concerns regarding ambiguous statutory language by researching best practices in the equine industry and the respective obligations of operators and participants. Considering the court’s analysis of the Equine Act and its comparison with the provisions of the Ski Act (*N.J.S. 5:13-1 to -11*) and the Roller Skating Rink Safety and Fair Liability Act (*N.J.S. 5:14-1 to -7*), a detailed study of those statutes was conducted.

A Revised Tentative Report was presented to the Commission for consideration before the end of 2013 and a Final Report is anticipated for 2014.

### Judgments and Their Enforcement

The Law revision Commission released a Tentative Report on Judgments and their Enforcement in July 2013. The Commission’s review of statutes concerning judgments continues an earlier effort to revise Title 2A provisions concerning the courts and the administration of civil justice. Prior recommendations by the NJLRC were not adopted and many of the current sections of the statute impacted by this project remain outdated,

unclear and superseded in practice. Moreover, even taken together the statutes and rules do not reflect the totality of current practice.

The NJLRC's current proposal articulates the processes by which a judgment or order is recorded and the process by which information concerning subsequent events that affect the judgment are added to the record.

The current law concerning the collection of judgments includes many sections that are outdated, unclear or superseded in practice by newer more detailed court rules. As a whole, they fail to reflect current practice and do not give proper guidance or assistance to a party trying to collect a judgment. The proposed revision is a comprehensive statement of the law relating to collection of judgments. In addition to clarifications brought about by revisions in terminology, the Commission proposes that the collection procedure be driven by written collection instructions from the judgment creditor to the collection officer. This is an innovation in law that conforms the statutes to recent case law and practice. At one time, a sheriff armed with a writ of execution might have been presumed to know the nature and location of the debtor's assets within the county. This obviously is no longer the case. Now, the collection officer normally relies on the creditor for instructions, and the courts have held that the officer must follow the reasonable instructions of the creditor in satisfying a judgment. The Commission proposal formalizes transmission of these instructions to the officer and establishes the guidelines for determining priorities among claimants and the time when the collection order must be returned.

The Commission has taken no position concerning modification of the current \$1,000 personal property exemption, which involves policy-laden decisions best left to the Legislature. However, the Commission proposal revises the unworkable system of appraisal that accompanies present exemption procedures. The Commission proposes that when neither party objects, the collection officer's informal evaluation of items of personal property be accepted as the basis for claiming exemptions. A Final Report is anticipated in 2014.

### **Multiple Extended-Term Sentences**

New Jersey sentencing laws authorize longer prison terms for some offenses under certain conditions, subject to the provisions of *N.J.S. 2C:44-5*. In *State v. Hudson*, 209 *N.J.* 513 (2012), the New Jersey Supreme Court held that, under *N.J.S. 2C:44-5* subsection b.(1), a criminal defendant may not be sentenced to more than one extended term of imprisonment where sentencing is conducted in separate proceedings and where the second sentence is imposed for offenses committed prior to the imposition of the first sentence. The majority based its holding on the statute's plain language. The dissent, however, argued that key language in the statute is ambiguous and that the majority's interpretation "contravenes the statute's goals and legislative history, and unnecessarily constrains the discretion of sentencing courts." *Hudson*, 209 *N.J.* at 538.

Recognizing the *Hudson* decision as settled law but also acknowledging the interpretive issues raised in dissent, Staff initiated a project in September 2012 aimed at modifying *N.J.S. 2C:44-5* subsection b.(1) to clarify its language in accordance with the Court's decision. After preparing a draft revision of the statute and soliciting comments from various criminal law practitioners, Staff released a Tentative Report in May of 2013; a Final Report is anticipated for 2014.

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## New Jersey Notaries Public Act/RULONA

A Revised Tentative Report regarding the New Jersey Notaries Public Act was released in September 2013. The Report is based on the Revised Uniform Law on Notarial Acts (RULONA). In July 2010, the Uniform Law Commission (ULC) approved and recommended RULONA for enactment in all states. The ULC acknowledged the rapid changes in technology and society that challenge the integrity and uniformity of the notarial practice among the states. RULONA seeks to provide a uniform framework that will strengthen the integrity of the notarial process amidst these changes.

In New Jersey, the law governing notaries has not been revised since 1979. *N.J.S. 52:7-10, et seq.* Like RULONA, the Commission's Tentative Report recommends expanding the definition of a "notarial act" to include electronic records and to provide a definition for electronic signature. The Tentative Report also describes electronic images when defining the official stamp and stamping device. The Report, like RULONA, requires that the: (1) individual signing must appear before the notary public whether the act is completed on a tangible or electronic record; (2) notary public must determine from personal knowledge or satisfactory evidence that the individual appearing before the notary public has the identity claimed and produced the signature on record; and (3) the individual must personally appear before the notary whether the act is completed on a tangible or electronic record.

The Commission's Report differs from RULONA because in select provisions the Report incorporates current New Jersey practice. For example, the proposed Section 52:7A-3b preserves the current requirement that a notary public applicant must submit a form prescribed by the Secretary of State and endorsed by a member of the Legislature. *NJLRC, New Jersey Law on Notarial Acts, Section 52:7A-3b.* The Report also includes the optional RULONA examination requirement but supplements the provision with a modified course of study and continuing education requirement for notary public applicants and for individuals renewing their commission. *NJLRC, New Jersey Law on Notarial Acts, Section 52:7A-4; 52:7A-7.* The Tentative Report also includes a modified form of the optional RULONA journal requirement. *NJLRC, New Jersey Law on Notarial Acts, Section 52:7A-27.*

*"The Law Revision Commission provides a unique opportunity for legal professionals with many varied perspectives to share our collective knowledge in the pursuit of improving the laws of our State. It is a privilege to participate and an honor to work with the dedicated and extraordinary Commissioners and Staff."*

*Grace C. Bertone, Esq.,  
Bertone Piccini*

Staff has sought comment from a variety of individual and entities to evaluate these and other provisions, including the New Jersey Notary Association, the National Notary Association, the Land Title Association, Notary Power, LLC, professors of law and commissioned notaries public. The Report received considerable support and comment throughout 2013; Staff continues to incorporate comments into the Report. A Final Report is anticipated in 2014.

## Sexual Offenses

In May 2012, the Commission approved a Tentative Report with proposed changes to the provisions of Title 2C that pertain to sexual offenses, *N.J.S. § 2C:14-1 – 2C:14-12.* This report was subsequently revised and released in April 2013 and October 2013. The Report addresses and proposes the elimination of the term "force" in New Jersey's sexual offense statutes and replaces it with a focus on the relevance of consent, based on New Jersey Supreme Court precedent that has changed the meaning of the statutes over several decades.

*State in Interest of M.T.S.*, 129 N.J. 422 (1992); see also *State v. Triestman*, 416 N.J. Super. 195 (App. Div. 2010). The Report also clarifies the application of the sexual offense provisions to persons with intellectual and developmental disabilities in a manner intended to provide needed protection without infringing the rights of these individuals, also in light of Supreme Court precedent.

Historically, rape prosecutions hinged on the response of the victim to the sexual offense, including whether and to what degree the victim had resisted and what the victim's sexual history had been. In 1979, New Jersey's law against sexual assault was reformed to refocus the crime away from the behavior of the victim and instead to concentrate on the defendant's assaultive conduct. Nonetheless, the legislature still included a requirement that "force" be used in order for a crime to rise to the level of sexual assault.

In *M.T.S.*, the New Jersey Supreme Court found that the element of "physical force," as used in *N.J.S. 2C:14-2*, was undefined and ambiguous, and, in light of the legislative history, concluded "that any act of sexual penetration engaged in by the defendant without the affirmative and freely-given permission of the victim to the specific act of penetration constitutes the offense of sexual assault" and that no force beyond that necessary to accomplish the penetration was necessary. In a 2010 case, *State v. Triestman*, the Appellate Division extended that reasoning to the crime of sexual contact. The Commission Report recommends the elimination of the term "force" and instead focuses liability on the issue of consent for crimes for which consent is a defense. The Report also recommends reorganizing the statute to clarify the offenses for which consent is not a defense based on the victim's age or other circumstances.

The Report further proposes revisions to address the application of sexual offense provisions to persons with intellectual and developmental disabilities, also in response to a New Jersey Supreme Court decision that has guided interpretation of the law for decades. *State v. Olivio* interpreted the current law governing sexual offenses against those with intellectual and developmental disabilities in a way that balances the rights of those individuals to have full lives, including consensual sex, while ensuring that individuals who are at risk from predators are protected. In the years since the *Olivio* decision, the legislature and many across the country have worked to decrease discrimination against those with disabilities. Moreover, New Jersey has taken many important steps forward to change its law so that it no longer includes pejorative or discriminatory terms throughout the statutes. This Report incorporates the *Olivio* standard into statutory language, in order to preserve the ability of those who have such disabilities to lawfully consent to sexual intercourse where relevant and to ensure that they are protected from others when they cannot. A Final Report is anticipated in early 2014.

## **Title 9 – Child Abuse and Neglect**

In December 2013, the NJLRC released a Tentative Report proposing revisions to the law regarding child abuse and neglect. The Commission proposal includes sections that deal directly with proceedings concerning child abuse and neglect, proceedings to allow the Department of Children and Families to provide services to children in need, and provisions that govern proceedings to terminate parental rights. Although actions on these subjects are usually connected, the provisions governing them are now separated, most of the child abuse and neglect provisions are found in Title 9, and the provisions pertaining to children in need of services and the termination of parental rights in Title 30. The Report replaces Chapter 6 of Title 9 and Chapter 4A of Title 30.

Key provisions, including the definition of child abuse and neglect and the parameters of actions to provide services for children in need of services where abuse or neglect need not be proved, are derived from

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recent decisions of the New Jersey Supreme Court. These provisions attempt to strike a balance, allowing the Department of Children and Families to help children in need but not labeling parents as child abusers without a clear basis.

Because the current law was enacted over a long period of time, there are provisions that no longer reflect current practice; these have been deleted or rewritten, as appropriate. The many overlapping provisions of the current law have been consolidated. The revision is divided into chapters and consolidates overlapping provisions and organizes the material into groups of provisions on related subjects. The principal revisions are contained in Chapter 27, which concerns child abuse and neglect and children in need of services, and Chapter 30, regarding the termination of parental rights. The last chapters in the Report pertain to discrete subjects added to the law relatively recently and have been changed modestly if at all. They are included in the Report so that whole coherent parts of Titles 9 and 30 can be superseded.

This revision benefitted from the help of many interested parties, including representatives from: the Department of Children and Families; the Office of Law Guardian; the Office of the Public Defender; Parental Representation Program; and members of the public with a deep interest in issues raised by child abuse and neglect.

### **Tuition Aid Grants**

A Tentative Report concerning Tuition Aid Grants was released in April 2013. This project that resulted from the New Jersey Supreme Court decision in *A.Z. ex rel. B.Z. v. Higher Educ. Student Assistance Authority*, 427 N.J.Super. 389 (2012), in which the Court was asked to construe the provisions of New Jersey's student financial aid laws defining who is eligible to receive a Tuition Aid Grant (TAG) outlined in *N.J.S. 18A:71B-2*. The main issue, found in subsection b. of *N.J.S. 18A:71B-2*, is the ambiguity identified by the Court regarding what it means to be a "resident" of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established, a New Jersey residence. The Court held that "a student's legal residence [is] only presumed to be that of his or her parents' residence," and that such presumption can be rebutted. The Court stated that the Legislature, in addressing the impact of parents who move out of state, implicitly approved the presumption—but only a presumption—that a dependent student's legal residence was the same as his or her parent's residence.

The Appellate Division examined the legislative history of the TAG program as well as the residency requirements outlined in *N.J.S. 18A:71B-2* subsection b. and determined that irrefutably assigning to a dependent student the domicile of his or her parent alters the plain meaning of the statute, and is contrary to the underlying legislative intent. *A.Z. ex rel. B.Z.* at 399. The Court found that the regulation contravenes decades-old administrative interpretation, implicitly approved by the Legislature in subsequent enactments, that a student's legal residence was only "presumed" to be that of his or her parents' residence. *Id.* In the 1991 codification of the provision addressing the impact of parents who move out of the state, the Legislature implicitly approved the presumption—but only a presumption—that a dependent student's legal residence was the same as his or her parent's residence. *Id.* at 400. At the inception of the TAG program, the administrative regulations included language suggesting that there was only a presumption that the parent's residence determined the child's legal residence. *Id.* However, in 2005, the administrative agency amended the regulations deleting relevant language regarding the presumption.

The Appellate Division has answered the question of what it means to be a "resident" of this State in the context of a dependent student whose parent or guardian is prevented from establishing, or has not established

a New Jersey domicile. The Higher Education Student Assistance Authority (HESAA), responsible for administering the funds for student aid, is still controlled by a regulation that alters the terms of the governing statute. As a result, there is potential for the continuous misapplication of the law since the HESAA is mandated to act in accordance with the regulations. If the statute is left unchanged, it could result in further litigation that could potentially be avoided by modifying the statute. The NJLRC's monitoring of Legislative action revealed that the Legislature has taken up this issue. In October of 2013, the Commission agreed that to do anything now other than hold the Report is to guess at the preference of the Legislature, and that the Report should be held pending Legislative action.

### **Underground Facility Protection Act**

A Tentative Report regarding the Underground Facility Protection Act was released in May 2013. The Report recommends revising a subsection of the Underground Facility Protection Act, *N.J.S. 48:2-73*, et seq., (UFPA) that compels parties seeking property damages in underground facility disputes to submit their claims to the Dispute Settlement Office (DSO) without preserving their right to a jury trial. *N.J.S. 48:2-80(d)*. The Supreme Court considered this provision in *Jersey Cent. Power & Light Co. v. Melcar Utility Co.*, 212 N.J. 576 (2013) (*JCP&L*) and held the statute unconstitutional.

The Court found that “even when the Legislature has acted to compel the use of arbitration” a “private litigant’s right to a trial by jury for a cause of action rooted in common law” has been preserved by expressly “including the right to a trial *de novo*.” *Id.* at 597; see e.g., *N.J.S. 39:6A-31*; *N.J.S. 2A:23A-25*. Since the UFPA does not mandate arbitration or call for a trial *de novo*, the Court concluded that the DSO is powerless to resolve the statutory deficiency by issuing conforming rules that recognize the right to a trial *de novo* when the DSO fails to resolve the dispute through arbitration. *Id.* at 600. The Court held that its only recourse was to declare that the statute in question was “constitutionally flawed” concluding that the Court, like the DSO, was powerless to add language to the statute, and that only the Legislature may make the correction. *Id.*

The UFPA was enacted in the wake of a 1994 gas pipeline explosion caused by third party construction damage. The UFPA was designed to protect the public from the risk of harm and companies from the loss posed by hazards from underground facilities. *JCP&L*, 212 N.J. at 581. The UFPA carries significant penalties for those who disregard its provisions. Subsection d. of the UFPA was added in 2005 creating liability for any underground facility operator who fails to mark and for an excavator who damages an underground facility. Subsection d. requires that disputes less than \$25,000 be submitted to the DSO for alternative dispute resolution.

Currently, all UFPA disputes under \$25,000 are submitted to the DSO within the Office of the Public Defender for alternative dispute resolution (formerly the Office of Dispute Settlement (ODS)). The DSO conducts mediation and arbitration proceedings and, prior to the *JCP&L* case, disputes under \$25,000 were considered for either resolution method. As noted by the Court, the DSO now submits all disputes under \$25,000 to arbitration. *JCP&L*, 212 N.J. at 585. Prior to the *JCP&L* proceedings, the DSO had not formally adopted rules or regulations establishing the procedures to be followed for matters requiring alternative dispute resolution. See *JCP&L*, 212 N.J. at 566-67. *JCP&L* claimed unfairness because the DSO failed to formally establish its procedures. *Id.* at 601, n.1. As noted in the case footnotes, the DSO has since filed rule proposals addressing many of the issues raised in the *JCP&L* action. *Id.* at 601, n.2.

The Commission has prepared revisions to subsection d. of the UFPA and anticipates release of a Final Report in 2014.

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## 7. – Work in Progress

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## 7. – *Work in Progress*

### **Bias Intimidation Statute**

In March 2013, the Commission considered a project revising a subsection of the Bias Intimidation Statute, *N.J.S. 2C:16-1, et seq.*, to reflect the determination made in *State v. Pomianek*, 429 N.J. Super. 339, 343 (App. Div. 2013). The Court ruled that subsection (3) of the statute would be unconstitutional if it permitted the victim's perception of an alleged offense to be the basis for conviction. "To avoid an interpretation that would render the provision unconstitutional, and to effectuate the Legislature's purpose in enacting the statute, as reflected in the legislative history," the Court ruled that "subsection (3) requires proof of the defendant's biased intent." *Id.*

The Commission refrained from working on this issue to allow opportunity for appellate review by the New Jersey State Supreme Court before proceeding with further research and possible drafting.

### **Collateral Consequences of Criminal Convictions**

In September 2011, the Commission authorized a thorough review of New Jersey's statutes and administrative code in order to compile a list of the collateral consequences of criminal convictions. The project was prompted by *In re D.H.*, 204 N.J. 7 (2010), a case which struggled to harmonize the statute regarding the effect of an order of expungement, *N.J.S. 2C:52-27*, with the statute mandating the forfeiture of public office upon a conviction for certain crimes, *N.J.S. 2C:51-2*. The *D.H.* Court held that the former had no effect on the latter. Research continues on a project that now consists of three parts.

The first part involves proposed modifications to the language of the Rehabilitated Convicted Offenders Act to address the current "bifurcated" nature of the statute, which was enacted in 1968 and then modified in 2007. Although the result is a single statute, the component parts do not interact smoothly and additional revision appears to be warranted to consolidate them and make the interplay between the sections more coherent.

The second part of the project is the identification and classification of situations in which the issuance or denial of a license, employment, or other benefit is based on a determination of "moral turpitude" or "good moral character." It appears that it would be useful to revise the statutory language so that provisions that concern similar situations are interpreted and applied in a consistent manner.

The third part of this project involves an analysis of the statutory language and the cases that concern the forfeiture of public office. That part of the project will require a determination about whether it is appropriate to distinguish between different types of public employees and different types of offenses, and to treat them differently for purposes of forfeiture.

Work on this project is ongoing and Staff has developed some promising contacts for purposes of outreach. A Tentative Report is planned for 2014.

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## Department of Corrections ID

In February 2013, the Commission began work on a project in response to a concern raised that Department of Corrections identification card, although issued by the State, is not accepted by the State as an official identification for certain other purposes. It does not, for example, qualify as one of the six points of identification for obtaining a New Jersey driver's license.

Preliminary research revealed that information regarding the six points of identification needed for a license or non-driver identification card is included in the regulations, rather than in the statutes. An identification card issued by the Department of Corrections is arguably similar to some of the documents listed, including a New Jersey firearm purchaser card or a public assistance card, but it is not included in the list. Title 39 does not provide the same level of detail as the regulations regarding the issuance of a license. In addition, there is no reference to Department of Corrections identification cards in Title 39 of the statutes or in the licensing provisions contained in Title 13 of the Administrative Code (Chapter 21 pertains to Licensing Service).

There is, however, language contained in *N.J.S. 30:1B-6.2*. Title 30 pertains to institutions and agencies and Chapter 1B pertains to the Department of Corrections, which provides that the "Commissioner of Corrections shall provide to each inmate at least ten days prior to release from a State correctional facility" a "non-driver identification card, which shall be issued by the New Jersey Motor Vehicle Commission and for which the Motor Vehicle Commission shall accept a former inmate's Department of Corrections identification card to have a two-point value in applying for the non-driver identification card." Staff is examining whether a modification to that existing statute, or the draft of a new statutory section, could address the issue.

## New Jersey Electronic Legal Materials Act

One of the projects approved and recommended for enactment in all states by the Uniform Law Commission (ULC) is the Uniform Electronic Legal Material Act (UELMA). The UELMA was released by the ULC in July 2011 and has been promoted by the American Association of Law Libraries, and discussed very seriously by the New Jersey Law Librarians Association. Liaisons from the Seton Hall Law School library and the Rutgers School of Law library asked that the Commission review the Act for possible introduction in New Jersey and enactment by the Legislature.

The ULC explains, in its summary of the Act, that the availability of government information online facilitates transparency and accountability, provides widespread access to essential information, and encourages citizen participation. The UELMA was designed to address the need to provide and manage electronic government information in a manner that guarantees trustworthiness and continued access.

The UELMA is designed to provide for the authentication, preservation, and accessibility of official electronic state legal material and to assist state governments in guaranteeing the free flow of trustworthy legal information. It gives states discretion in determining what categories of "legal material" will be covered. The Act does not affect any relationships between an official state publisher and a commercial publisher, nor does it affect copyright laws or the rules of evidence.

The choice of technologies for authentication and preservation is left to the states, but adoption of the UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. The Act is intended to be complementary to the Uniform Commercial Code (UCC, which covers sales and many

*"It is a pleasure to be a part of a group of people who bring such skill, commitment, and enthusiasm to the work that they do."*

*Laura C. Tharney  
Executive Director, NJLRC*

commercial transactions), the Uniform Real Property Electronic Recording Act (URPERA, which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (UETA, which deals with electronic commerce). The UELMA, in the Prefatory Note, says that “[p]roviding information online is integral to the conduct of state government in the 21<sup>st</sup> century.”

A Revised Draft Tentative Report was prepared by Staff in June 2013, but, after consideration of the issues, the Commission determined that it was not satisfied with the approach that had been presented, and asked Staff to conduct additional research and revise the Report. It is anticipated that a revised Report will be provided for Commission consideration in 2014.

### **New Jersey Soldiers and Sailors Civil Relief Act**

In April 2013, the Commission reviewed the New Jersey Soldiers’ and Sailors’ Civil Relief Act (NJSSCRA), *N.J.S.* 38:23C-1 et seq. to determine whether there are legal or practical issues presented by the NJSSCRA that may require amendment to ensure its compatibility with the federal Servicemembers Civil Relief Act (SCRA), 50 U.S.C. App. 501 et seq.

While the NJSSCRA mirrors the SCRA in many respects, conflicts have been noted between the NJSSCRA and the SCRA that might challenge the consistent application of the applicable law to servicemembers in New Jersey. Legal practitioners have identified issues that arise when representing servicemembers in New Jersey courts, including a court’s ability under the NJSSCRA to exercise discretion when determining whether to stay a proceeding, to vacate or set aside a judgment or decree against a servicemember or to appoint an attorney to represent the servicemember. The provisions of the New Jersey law differ from those found in the federal law. The NJSSCRA provides the initial reference point for the New Jersey courts when faced with matters touching upon the relief provided by both the NJSSCRA and the SCRA. Consequently, the potentially unavoidable result might be the resolution of such matters in a manner not entirely consistent with the SCRA’s prescriptions.

The Commission sought to draft revisions to the NJSSCRA to reconcile these issues but held the project in deference to the potential revisions being prepared by the New Jersey State Bar Association (NJSBA). In December 2013, based on an update provided by Staff ‘s most recent conversations with the NJSBA that NJSBA is not involved in or aware of any draft legislation reconciling inconsistencies between the NJSSCRA and the SCRA, and it is not the intention of any section or subcommittee to begin work on such legislation in the near future, the Commission unanimously authorized Staff to further investigate whether there are legal or practical issues presented by the NJSSCRA that may require amendment to ensure its compatibility with the SCRA. A Tentative Report is anticipated in 2014.

### **Special Elections**

The Commission began work in September 2013 on a project pertaining to *N.J.S.* 40A:4-45.14, the local budget cap law. The Commission’s work on this statute stemmed from a 2013 case in which the Appellate Division addressed the legal question of whether a municipal budget ordinance is subject to a particular type of local referenda. *Roseff et al. v. Byram Township et al.*, 432 N.J. Super. 8 (App. Div. 2013). In the course of its analysis, the Court noted that *N.J.S.* 40A:4-45.14 contains language that no longer has any meaning as a result of statutory amendments to *N.J.S.* 40A:4-45.3, a law related to municipal budget caps.

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*N.J.S.* 40A:4-45.3, originally enacted in 1976, prohibits localities from increasing their budgets more

than 2.5 percent or the cost-of-living increase each year, whichever is less, but exempts certain types of expenditures from this statutory cap. N.J.S. 40A:4-45.3(i). Among the exemptions, N.J.S. 40A:4-45.3(i) permits municipalities to exempt from their budget caps “any amount expended to conduct a special election required by law to be held at a time other than the time of a general election or regular municipal election, as appropriate.” Laws of 1983, ch.49. This section includes all types of special elections, including referendum elections on the budget cap as permitted by N.J.S. 40A:4-45.3(i) but also charter change elections, referendum on salary increases, recall elections and others. When this part of the statute was enacted, the legislature also enacted N.J.S. 40A:45.14, which allows municipal governing bodies to increase local budgets a small amount over the normally prescribed cap without voter approval as long as certain conditions are fulfilled. The statutory scheme gives municipalities an “either/or” choice: In *Roseff*, the Court interpreted the relationship between the two statutes as indicating that the Legislature has granted municipal governments the ability to increase their own budgets 1% above the cap without voter approval, but has required voter approval for any increase above 1%. *Roseff*, 432 N.J. Super. at 18-19. Later amendments to both laws made it clear that although municipalities were not permitted to hold an additional referendum in order to raise the municipal budget once an ordinance permitted under this subsection had been approved, the municipality could hold other kinds of special elections if one were required by law and those special elections would not be considered under the budget cap.

Subsequent amendments eliminated a number of the exceptions from the budget cap, in order to once again reduce municipal budgets. Among the amendments, the Legislature removed the exemption for special elections, so that municipal funds spent on special elections are no longer exempted from the budget cap. Municipal funds that are approved by referendum are still exempt, but the costs associated with the special elections held to approve or reject those appropriations are no longer exempt, nor are any other type of special election. However, the Legislature did not remove the linked special election language from N.J.S. 40A:4-45.14. Nonetheless, as the Court noted in *Roseff*, “in light of this legislative history, the special election language left in N.J.S. 40A:4-45.14 . . . has no discernible meaning at all because subsection (i) of N.J.S. 40A:4-45.3 no longer addresses special elections.” *Roseff*, 432 N. J. Super. at 21. Work is ongoing on a Report that is expected to recommend eliminating the last sentence of N.J.S. 40A:4-45.14 as obsolete statutory text and a Tentative Report is anticipated in early 2014.

### **Uniform Asset Freezing Orders Act**

The Commission commenced this project to determine whether to recommend adoption of the Uniform Asset-Freezing Orders Act (UAFOA) in March 2013. In July 2012, the Uniform Law Commission (ULC) approved and recommended UAFOA for enactment in all the States.

The UAFOA is designed to create a uniform process for the issuance of asset freezing orders, which are *in personam* orders that freeze the assets of a defendant by the imposition of injunctive restraints upon the asset owner and collateral restraints upon non-parties, such as a defendant’s bank, in order to preserve assets from dissipation, pending judgment.

What is new about the UAFOA is that in the United States, the primary remedy available to a litigant to preserve assets from dissipation, pending judgment, has been an *in rem* order directed to the attachment of restraints upon specific assets, not an *in personam* order upon the asset owner or others, per se, which assets are subject to the control of the court, so as to prohibit their unauthorized transfer for the purpose of avoiding satisfaction of a judgment.

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The UAFOA provides an additional “layer” of protection by focusing on those who have power over assets to be preserved for satisfaction of judgments by subjecting them to *in personam* injunctive restraints upon the exercise of that power by way of orders which, if disobeyed, will subject them to punishment for contempt. A primary example of why that additional “layer” of protection might be necessary in a particular case is when the assets sought to be preserved for judgment are in a foreign jurisdiction and, hence, beyond the reach of an *in rem* order for their preservation. A Tentative Report is anticipated in 2014.

## Wills

In November 2013, the Commission approved a project to consider whether to recommend that the Legislature enact a law permitting individuals to file a form will as a part of their annual state tax return. The problem of mass intestacy in New Jersey and throughout the United States was brought to the Commission’s attention by Professor Reid Kress Weisbord of Rutgers Newark Law School. Professor Weisbord has written an article proposing a system whereby states include an optional “Schedule – Last Will and Testament” in their annual state tax return, allowing individual taxpayers to complete their will at the same time as they do their taxes.

Many people die intestate although they plan to create wills during their lives. *See, e.g.*, Michael R. McCunney & Alyssa A. DiRusso, *Marketing Wills*, 16 Elder L. J. 33, 33 (2008) (“Despite the relative certainty of mortality, most people die without having executed a valid will.”). Moreover, the law of intestacy, which governs the distribution of assets without a will, may be completely or partly inconsistent with what the individual would have desired. Although there is no data on how many individuals in New Jersey die without a will, nationally the figure has been estimated to be as many as two-thirds of all Americans. *See* Gerry W. Beyer *Statutory Will Methodologies—Incorporated Forms v. Fill-In Forms: Rivalry or Peaceful Coexistence?*, 94 Dick. L. Rev. 231, 235 n.8 (1990).

Mass intestacy causes a number of both personal and public problems. For individuals, dying without a will means that the individual has no ability to ensure that those he or she wishes to pass wealth or possessions to ultimately receive those gifts. From the perspective of society, the law has long “abhor[ed] intestacy,” which imposes costs on courts and the legal system. *See, e.g.*, *Tobler v. Moncrief*, 72 N.J. Super. 48, 52 (N.J. Super. 1962). These costs can be significant both financially and emotionally, such as in situations where there are minor children and the court must appoint a guardian. *See, e.g.*, Gerry W. Beyer, *Statutory Fill-In Will Forms—The First Decade: Theoretical Constructs and Empirical Findings*, 72 Or. L. Rev. 769 (1993). In addition, there is a general public interest in “[t]he orderly disposition of property at death.” *Trimble v. Gordon*, 430 U.S. 762, 771 (1977). Many states have liberalized their estate planning laws, which formerly required a number of formal steps in order to create a valid will.

New Jersey is among the states that have adopted policy changes intended to broaden recognition of wills. Most recently, in 2004, the Legislature broadened the recognition of “holographic,” or unwitnessed, handwritten wills, and expanded courts’ authority to recognize a range of “improperly” drafted wills so long as they are consistent with the testator’s intent to create a will. *See, e.g.* N.J.S. 3B:3-2 and -3. Since then, New Jersey courts have recognized a variety of wills that did not comply formally with the requirements of N.J.S. 3B:3-2 or -3, but that were clearly intended as the testator’s last will and testament. *See, e.g.*, *In the Matter of the State of Richard D. Ehrlich*, 427 N.J. Super. 64, 70-74 (App. Div. 2012). Nonetheless, it appears that most people still do not create wills.



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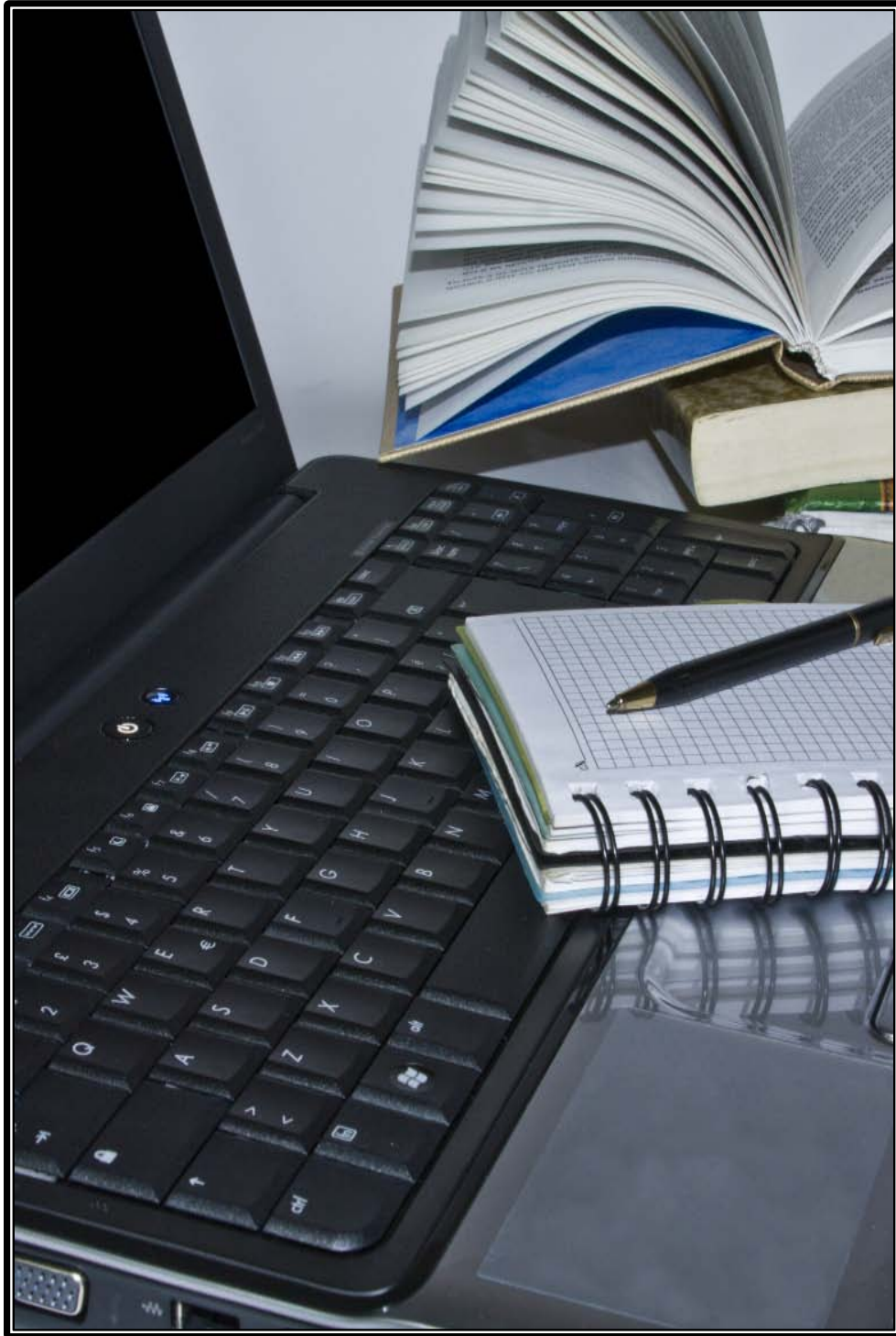
Because the vast majority of Americans, including New Jersey residents, file taxes returns, appending an optional schedule containing a will form to the income tax return could lead to a large increase in the number of New Jersey residents who are given the opportunity to create a will. There are a number of reasons that appending a will form to the state tax return may meet the same purposes and functions of formal will creation. First, the gravity with which individuals approach the making of their will is, if not identical, akin to the seriousness with which individuals approach their tax returns. Second, the information needed to consider making one's will is very similar to the information needed to complete one's tax returns. Third, the mechanisms that exist for ensuring that individuals file correct tax returns are sufficiently personal and verifiable to stand in for the previously required attestation by witnesses.

Commission Staff has begun research and outreach in order to draft an appropriate proposal for the Commission to consider in 2014. The Commission has also approved research to determine whether a project should be undertaken to address potential issues in the New Jersey statutes relating to intestacy, based on concerns raised during the consideration of the Wills project.

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## 8. – Completed Projects

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## **8. – Completed Projects**

### **New Jersey AIDS Assistance Act**

In September 2013, Staff presented a Memorandum to the Commission regarding the New Jersey AIDS Assistance Act, (“NJAAA”), *N.J.S. 26:5C-1 et seq.*, concerned with reporting and confidentiality in AIDS and HIV cases, and which recently barred prosecutors from obtaining an HIV-positive defendant’s medical records. See *State v. C.M.*, 2013 WL 3582074 (2013).

The Commission determined that, in light of the fact that an Assembly bill and a Senate bill were proposed for introduction to address the issues identified the Memorandum, no Commission action would be taken regarding the proposed NJAAA project at this time.

### **New Jersey Spill Compensation and Control Act**

The Commission considered, in June 2013, whether to modify the language of the New Jersey Spill Compensation and Control Act, *N.J.S. 58:10-23.11, et seq.* (Spill Act) to reflect the determination made by the Supreme Court in *N.J. Dep’t of Env’tl. Prot. v. Dimant*, 212 N.J. 153, 182 (2012). The Court in *Dimant* held that when seeking damages, as a threshold matter under the Spill Act, a “nexus” must be established between the discharge and the relief sought, once the threshold nexus is satisfied, then there must be shown by a preponderance of evidence “a reasonable link between the discharge, the putative discharger, and the contamination at the specifically damaged site.” *Id.* at 182, 185.

The Commission decided that since the Supreme Court decision in *Dimant* is untested, it was most appropriate for the Commission to refrain from further action until the Court decision has been applied.