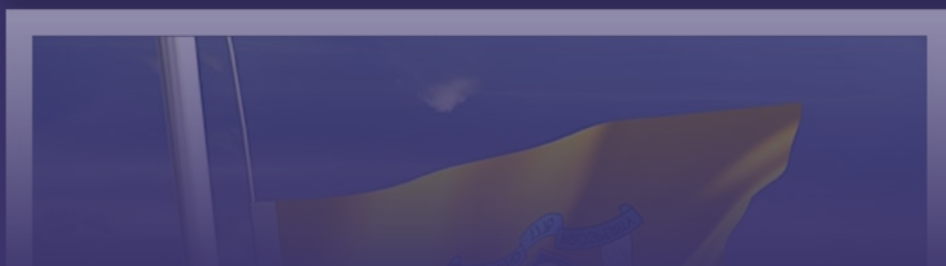


ANNUAL REPORT - 2014

New Jersey Law Revision Commission



TWENTY-EIGHTH ANNUAL REPORT

2014





Please address comments and questions regarding this Report to:

Laura C. Tharney, Executive Director
New Jersey Law Revision Commission
153 Halsey Street, 7th Floor
Box 47016
Newark, New Jersey 07102

Tel: 973-648-4575

Fax: 973-648-3123

Email: lct@njlrc.org

Web: www.njlrc.org

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>

*The above photo of the Gibraltar Building located at 153 Halsey St. is provided by <http://www.tysto.com/articles04/q2/jersey.shtml>. Cover photo and photos appearing on pages 20, 27, 36, 44 and 47 are included pursuant to a licensing agreement with Shutterstock Inc., and the remaining photos are included pursuant to a licensing agreement with Can Stock Photo, Inc.

The New Jersey Law Revision Commission

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

Statement of the Chairman

As the Chairman of the New Jersey Law Revision Commission, I am pleased to present the 2014 Annual Report of the New Jersey Law Revision Commission for the consideration of the Legislature, marking the conclusion of another productive year for the Commission.

In 2014, the Commission saw the departure of Albert Burstein, the longest serving member of the Commission and its last original member. Al served as the Chairman of the Commission from the time it began work in 1987 until 2006. I am honored to have worked with Al during his tenure with the Commission, and I know that the other Commissioners join me in expressing our gratitude for his years of exemplary service to the State of New Jersey. I know that they also join me in warmly welcoming Anthony R. Suarez as our newest Commissioner. In just a short time as a Commissioner, Anthony has made valuable contributions, and I extend my thanks to him, and to all of our Commissioners, for the dedication, experience, and care that they bring to the work that we do.

The Commission's focus continues to be the maintenance of a high standard of legal research, analysis, and scholarship in the improvement of New Jersey's laws. Three NJLRC Reports were enacted by the Legislature in 2014 with bipartisan support, and each was signed by the Governor. Although the primary goal of the Commission is to prepare Reports that may serve as the basis for legislative enactments, the Commission's 2012 Final Report pertaining to the Uniform Interstate Depositions and Discovery Act was forwarded to and considered by the New Jersey Supreme Court's Civil Practice Committee and, in 2014, the Court Rules were modified in response. In addition to these developments, the publication of scholarly articles written by Commission Staff members and the citation of Commission Reports by academic writers and judges demonstrate further practical application of the research and analysis performed by the NJLRC.

My thanks, as always, to the Commission Staff members and the students who work with us diligently to 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. I also must thank the many commenters from government entities, the legal profession, the academic community, the private sector, and the public, who voluntarily contributed so generously of their time, experience and expertise to assist the Commission with its various projects. It is always our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

We look forward to continuing work on several significant areas of law revision in 2015, as well as to new projects that will be developed in the coming year, and to the continuing development of tools and processes that facilitate the public's participation in the Commission's work.

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

Retirement of Albert Burstein

Albert Burstein retired from the New Jersey Law Revision Commission in July of 2014 as the longest-serving member, and the last original member, of the Commission. Al was the first Chairman of the Commission when it began its work in 1987, and he continued to serve in that capacity for nearly 20 years.

At various points throughout his career, Al rightfully has been lauded as a person of the highest integrity, someone who always took the high road and never lost sight of his goal of improving the lives of New Jersey citizens. His career spans more than 60 years and includes work in diverse areas of the law. The Commissioners and Staff of the New Jersey Law Revision Commission have long been inspired by Al's intellect and dedication, and his many years of service will be remembered with the utmost respect and with great fondness.

A native of Jersey City, Al attended Columbia University for three years before entering the service during World War II in 1943 as a part of the 44th Infantry Division. He remained in service in the European theater through the end of the war and was discharged in 1946. Al received the Army Combat Infantryman Badge and the Bronze Star Medal for his service during the war. He was later appointed a Chevalier of the French Legion of Honor in 2010 in appreciation for his contribution to the liberation of France.

Returning to his studies after the war, Al finished his final undergraduate year and then entered Columbia Law School in 1947. He completed his legal education in two years by attending school year-round, including the summers, to make up for the time he spent in military service.

Al's career as an attorney in private practice resulted in a statewide reputation for excellence. He was a founding partner of the firm of Herten, Burstein, Sheridan, Cevasco, Bottinelli, Litt & Hartz, L.L.C., in 1987, and continues to practice law today as a partner with the successor firm Archer & Greiner, P.C.

Engagement in local politics early in his career transitioned, in 1971, to Al's first election to membership in New Jersey's General Assembly, where he served for 10 years, including a term as Majority Leader. As a member of the Legislature, Al played a significant role in the study of, and the enactment of, laws in the areas of capital budgeting and planning, education, employment, ethics, probate reform, and tax.

In addition to his work as an attorney and a member of the Legislature, Al has a history of involvement in civic and charitable causes and he also frequently served as a member or chairman of commissions, committees, boards, and bodies at the local, state and federal levels. Some of Al's other appointed positions include work as a member of the Election Law Enforcement Commission, the Chairman of the State Commission of Investigation Review Committee, Chairman of the Bergen County IIB District Ethics Committee, Chairman of the federal Model Adoption Legislation and Procedures Advisory Council, and a member of the Editorial Board of the New Jersey Law Journal.

Table of Contents

| | Page |
|--|-------------|
| 1. – Overview of the Work of the NJLRC in 2014 | 9 |
| 2. – Members and Staff of the NJLRC in 2014 | 20 |
| 3. – History and Purpose of the Commission | 27 |
| 4. – Enacted Reports and NJLRC Case and Journal References | 29 |
| 5. – Final Reports and Recommendations 2014 | 36 |
| 6. – Tentative Reports | 44 |
| 7. – Work in Progress | 46 |
| 8. – No Action Recommended | 54 |

1. – Overview of the Work of the NJLRC in 2014



1. – Overview of the Work of the NJLRC in 2014

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 New Jersey's 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 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 possible, and clearly identify any areas in which consensus could not be achieved. This provides the Legislature with a record of the outstanding issues and identifies 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 2014, the New Jersey Law Revision Commission worked on 36 individual projects. Work on 10 of those projects was completed in 2014, and Final Reports and Recommendations were submitted to the Legislature for consideration. The Commission also released one Tentative Report, representing the Commission's first formal statement of work in an area of the law on which additional input is sought in order to bring the project to conclusion. Work continues on 12 projects that have not yet reached the Tentative Report stage and, during the course of the year, the NJLRC examined 13 other areas of the law in which it determined that further work by the Commission was not appropriate.

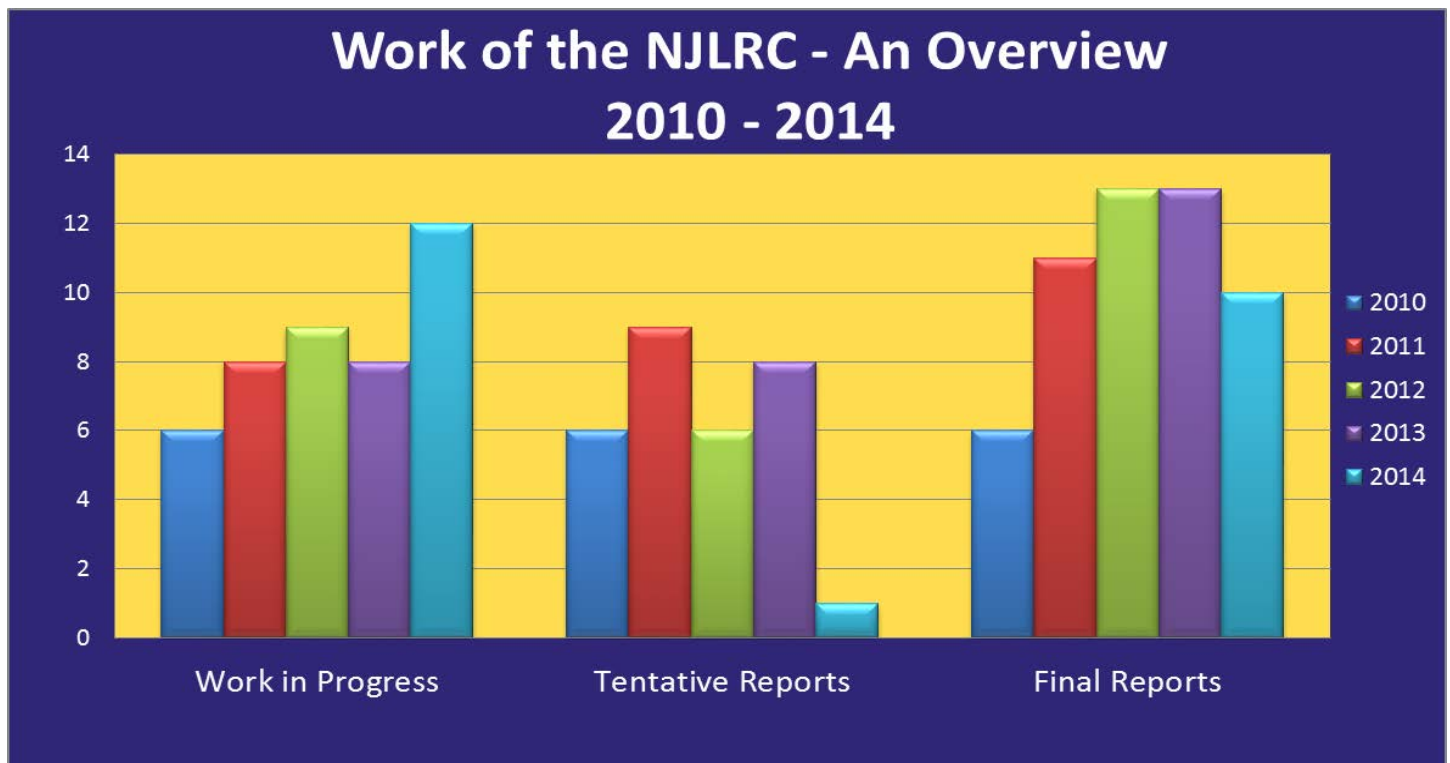
The NJLRC also expanded the general outreach of the Commission in 2014, in keeping with its statutory mandate to consider recommendations from "learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally for the improvement and modification of the general and permanent statutory law of the State." N.J.S. 1:12A-8.

NJLRC outreach in 2014 included increased interactions with the New Jersey law school communities, bar associations, lawyers, law firms, and other interested individuals and groups within the State. This has broadened the range of projects the Commission considers and the areas of the law in which it works, enlarged the pool of potential commenters on those projects, and enhanced the work that the NJLRC brings to the attention of the Legislature. A goal of this outreach is to enable the Commission to identify and present 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.

Another outgrowth of the Commission's outreach was the expansion of its interaction with students from New Jersey's three law schools and other educational institutions. In addition to its program of annually

hiring legislative law clerks, the NJLRC now provides opportunities for student credit-earning externship placements, and student pro bono hours. During the Spring semester of 2014, research and drafting assistance was provided to the NJLRC by pre-law student extern Jocelyn Donald through a cooperative relationship with the New Jersey Institute of Technology and Alison Lefkovitz, Assistant Professor and Director of NJIT’s Law, Technology & Culture program. In addition, during the Spring and Fall semesters of 2014, pro bono legal research and drafting assistance was provided to the NJLRC by law students Paulette Bartholomew, Joshua Bauers, Zachary Green, Timothy McCarthy, Margo Murphy, and Rachel Savicki 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 students Michael Heitmann and Tinamarie Hanson in cooperation with Lori Borgen, Esq., Associate Director of the Center for Social Justice, at Seton Hall University School of Law.

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 accessible by adding content to its website found at www.njlrc.org. Visitors to the site can access content that includes: 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 NJLRC’s work; and continuing legal education presentations as well as other presentations prepared by Commission Staff in recent years. The Commission looks forward to the increasing its 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, product, and communication in the coming year.

Enacted Reports:

In 2013, A3586/S2756, based on a NJLRC Final Report prepared in response to work of the Uniform Law Commission, received bipartisan support and passed both houses of the Legislature. The bills amended the law to remove the statutory authority of the Department of Health and the State Board of Medical Examiners over medical standards governing declarations of death on the basis of neurological criteria. In January 2014, the Governor signed the bill into law as L.2013, c.185.

In 2014, A1477/S1224, based on a NJLRC Final Report prepared in response to the work of the Uniform Law Commission, received bipartisan support and passed both houses of the Legislature unanimously. The bills amended New Jersey's law to create a New Jersey Family Collaborative Law Act, authorizing the application of the voluntary collaborative law process to resolve family law disputes and creating a privilege for certain family collaborative law communications made by a party or a nonparty participant in the process. On September 10, 2014, the Governor signed the bill into law as L.2014, c.50.

Also in 2014, A3064/S1909, based largely on a NJLRC Final Report recommending the repeal of anachronistic, superseded or invalid sections of the statutes, received bipartisan support and passed both houses of the Legislature unanimously. The bills identified various specific provisions of the law for amendment or repeal. On November 27, 2014, the Governor signed the bill into law as L.2014, c.69.

The NJLRC appreciates the attention of the Legislature and Governor Christie to these important areas of the law as well as their continued consideration of the NJLRC's work to improve the law in response to the existing and emerging needs of New Jersey citizens.

In addition to the enacted projects mentioned above, the Commission's Final Report pertaining to the Uniform Interstate Depositions and Discovery Act was forwarded to and considered by the New Jersey Supreme Court's Civil Practice Committee since the modifications proposed by the Final Report were more appropriate for implementation by Court Rule than by statute. The Commission's recommendation formed the basis for such a modification to the relevant Court Rules (R. 4:11-4 and R. 4:11-5) in 2014. The NJLRC appreciates the consideration given, and action taken, by the Judiciary in response to this recommendation.

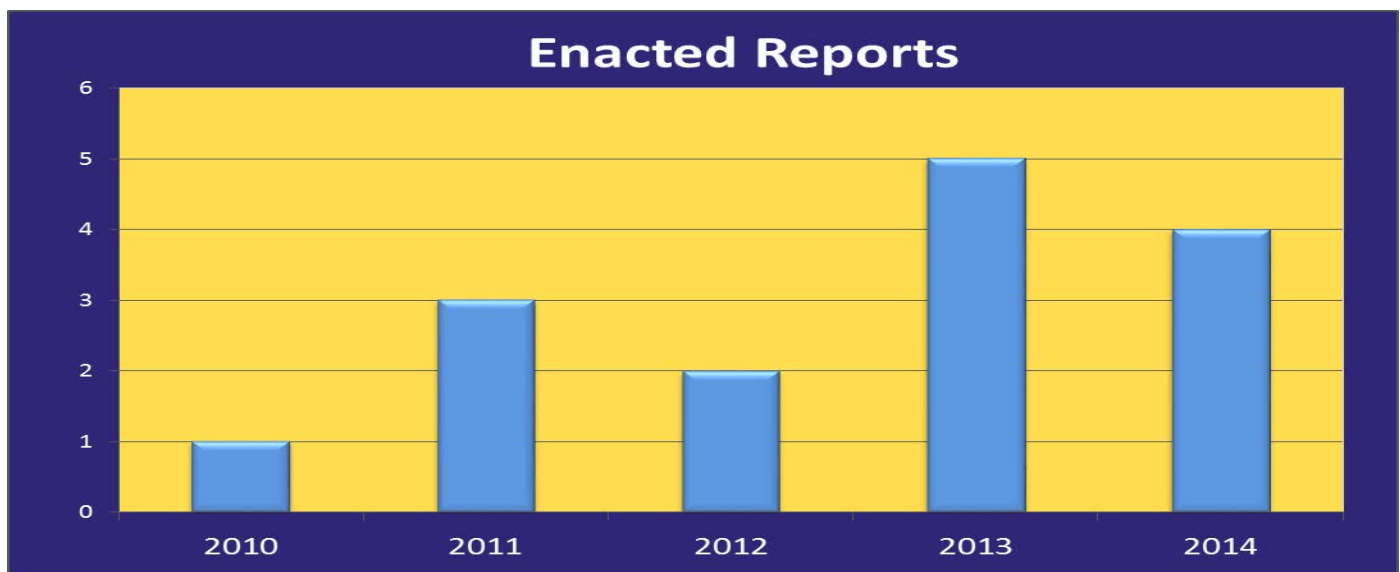
Bills Introduced Based on NJLRC Work:

In addition to the NJLRC projects enacted in 2014, the following NJLRC projects were the subject of bills introduced in 2014, or represent subject areas on which the NJLRC provided information and support to the Legislature:

- (Effect of) Abstentions
- Adverse Possession
- Durable Power of Attorney Act
- Mortgage Recording
- Overseas Residents Absentee Voting Law
- Standard Form Contracts
- Uniform Trust Code

The NJLRC would like to thank the following sponsors of the enacted and introduced bills listed above for their willingness to bring these important issues to the attention of their colleagues in the Legislature:

Assemblyman Robert Andrzejczak
 Assemblyman Michael Patrick Carroll
 Assemblyman Jack Ciattarelli
 Assemblyman Craig Coughlin
 Assemblyman Ronald Dancer
 Assemblyman Wayne DeAngelo
 Assemblyman Patrick Diegnan
 Assemblyman John DiMaio
 Assemblyman Timothy Eustace
 Assemblyman Carmelo Garcia
 Assemblywoman Mila Jasey
 Assemblyman Gordon Johnson
 Assemblyman Joseph Lagana
 Assemblywoman Pamela Lampitt
 Assemblywoman Gabriela Mosquera
 Assemblyman Vincent Mazzeo
 Assemblyman John McKeon
 Assemblywoman Nancy Munoz
 Assemblywoman Annette Quijano
 Assemblyman Gary Schaer
 Assemblywoman Holly Schepisi
 Assemblyman Jay Webber
 Assemblyman Benjie Wimberly
 Senator Diane Allen
 Senator Peter Barnes
 Senator Christopher Bateman
 Senator Steven Oroho
 Senator Ronald Rice
 Senator Nicholas Scutari
 Senator Brian Stack
 Senator Jeff Van Drew
 Senator Loretta Weinberg
 Senator Jim Whelan



The NJLRC Would Like to Thank:

In addition to the individuals named elsewhere in this Annual Report, the Commission extends its thanks to the following individuals and organizations for their valuable suggestions, input and support for various projects on which the NJLRC worked in 2014. The work of the NJLRC benefits tremendously from the willingness of individuals and groups to contribute their time, experience, and expertise to assist the Commission. The NJLRC apologizes for any inadvertent omissions from the following list:

Liana Abreu, J.D. Candidate, Seton Hall University School of Law

Joseph Accardo, Esq., Public Service Electric and Gas Company

Administrative Office of the Courts, New Jersey

The American Law Institute

Joel Aronow, Esq., Assistant Prosecutor, Camden County Prosecutor's Office

Sharon A. Balsamo, Esq., Assistant Executive Director / General Counsel, New Jersey State Bar Association

Kareen Bar-Akiva, Special Assistant, Department of Human Services, Office of Child Support Services

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

Andrew P. Bell, Esq., Locks Law Firm LLC

Gerry W. Beyer, Professor, Texas Tech University School of Law

Cynthia Borrelli, Esq., Bressler, Amery & Ross, P.C.

Robert Brady, Esq., Gibbons, P.C.

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

Burlington County Prosecutor's Office

Thomas J. Cafferty, Gibbons P.C.

Veronica L. Calder, Archivist, New Jersey State Archives

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

Guadalupe Casillas, Office of Law Guardian

Ronald Chen, Acting Dean, Rutgers School of Law – Newark

Jerry Clancy, Princeton Desktop Systems, Inc.

Michael Closen, Esq., Retired Professor, John Marshall Law School

Judith Cole, Executive Office Coordinator, The American Law Institute

Kristin M. Corrado, Esq., Passaic County Clerk

Emelia Dean, Ph.D., Executive Director, Faith In Action! Incorporated

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

Andrew J. DeMaio, Esq., Neff Aguilar, L.L.C.

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

William G. Dressel, Jr., Executive Director, New Jersey League of Municipalities

Mariellen Dugan, Esq., Senior Vice President, General Counsel, New Jersey Natural Gas

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

Stefan Erwin, Assistant Deputy Public Defender, Office of the Public Defender

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

David Ewan, Esq., New Jersey Land Title Association

Todd Feldman, Editorial Coordinator, The American Law Institute

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

Elaine Flynn, Middlesex County Clerk, Constitutional Officers Association of New Jersey – Secretary

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

Harvey Fruchter, Esq., Fruchter & Associates, LLC

Rafaela Garcia, Principal Counsel, Judiciary Section, Office of Legislative Services

Geoffrey R. Gersten, Deputy Attorney General, Office of the Attorney General

Jane E. Giacinto, Membership Manager, The American Law Institute

Noreen Giblin, Esq., Gibbons, P.C.

Casey Gillece, Legislative Counsel, Uniform Law Commission

Timothy Glynn, Professor, Seton Hall University Law School

Susan C. Green, First Assistant Deputy, Office of the Public Defender, Appellate Section

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

Patrick Hobbs, Dean, Seton Hall University School of Law

Marci Levin Hochman, First Assistant Legislative Counsel, Ethics Counsel, Office of Legislative Services

Heidi K. Hoffman-Shaloo, Esq., Lomurro-Davidson Eastman & Muñoz, P.A.

International Association of Collaborative Professionals

Chelsea Jasnoff, J.D. Candidate, Seton Hall University School of Law

Barbara Johnson, Director of Advocacy, Mental Health Association in New Jersey

Alyson R. Jones, Esq., Legislative Liaison, Administrative Office of the Courts

Patricia Jones, Camden County Surrogate, Constitutional Officers Association of New Jersey - Legislative Liaison

Alida Kass, Esq., Chief Counsel, New Jersey Civil Justice Institute

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

Kate Keisel-Caballero, Director, Polaris New Jersey

Kenneth Kettering, Esq., Professor, Brooklyn Law School, Reporter to the ULC Drafting Committee for the UVTA

Lisa Kirchenbaum, Associate Director, Court Appointed Special Advocates of New Jersey

John D. Kovac, Esq., Law Office of John D. Kovac

Chrissey Ladd, Consultant - Notary practice

Courteney Lario, J.D. Candidate, Seton Hall University School of Law

Ashley M. LeBrun, J.D. Candidate, Seton Hall University School of Law

Legal Services of New Jersey

Barry Lefkowitz, Lefkowitz Government Resources

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

Ronald LeVine, Esq.

Jessica Lewis Kelly, Esq., Civil Practice Division, Administrative Office of the Courts

Shelly Liggett, President, New Jersey Horse Council

James A. Louis, Office of Law Guardian

Kevin Lyons, New Jersey State Police Benevolent Association

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

Karyn Malinowski, Ph.D., Director, Equine Science Center – Rutgers, the State University

Violet Marrero, Manager of Special Projects, New Jersey Division of Highway Traffic Safety

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

Paul Matacera, MBI Gluckshaw

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

Lawrence J. McDermott, Esq., Pressler and Pressler, LLP

William McLoughlin, Managing Attorney, Rutgers School of Law – Camden, Federal Prisoner Reentry Pro Bono Project

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

Jessica Miles, Esq., Assistant Clinical Professor, Seton Hall University Law School

Richard J. Mirra, Esq., Of Counsel, Hoagland, Longo, Moran, Dunst & Doukas, LLP

Gary Mitchell, Deputy Public Defender, Office of the Public Defender, Office of Parental Representation

Honorable Thomas M. Moore, J.S.C., Chancery – General Equity (Essex County)

Jim Moseley, President, Limousine Association of New Jersey

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

New Jersey Council of Collaborative Practice Groups

New Jersey Governor's Highway Traffic Safety Policy Advisory Council

New Jersey Horse Council

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 Dispute Resolution Section, the Family Law Section, and the Real Property Trust & Estate Law Section)

New Jersey State Library

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

Benjamin Orzeske, Legislative Counsel, Uniform Law Commission

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

Melanie Payne, Esq., Criminal Practice Division, Administrative Office of the Courts

Rosemarie D. Peters, Monmouth County Surrogate

Daniel Phillips, Legislative Liaison, Administrative Office of the Courts

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

M.W. Pinsky, Esq., Law Offices of M.W. Pinsky

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

James Plousis, Chairman, New Jersey State Parole Board

Patricia Quinn, concerned citizen

Jeyanthi Rajaraman, Legal Services of New Jersey

Patricia Ratner, Esq., Director, New Jersey Horse Council

Joseph Ribsam, Deputy Commissioner, Department of Children and Families

Steven M. Richman, Esq., Duane Morris, LLP, ABA Advisor to the ULC Drafting Committee for the UAPOA

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

Sharon Rivenson Mark, Esq., The Law Office of Sharon Rivenson Mark, P.C.

Karen Robinson, Esq., Coordinating Attorney, ReLeSe (Newark Reentry Legal Services) / Volunteer Lawyers for Justice

Rutgers School of Law – Newark, International Human Rights Clinic

Daniel F. Sahin, Esq., Daniel F. Sahin, P.C. - Counsellors at Law

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

State of New Jersey, Department of Law and Public Safety - Office of the Attorney General

Ellen Stein, MBI Gluckshaw

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

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

George Truesdale, Owner, Clarks Landing Marine Group

Alice Tulecki, New Jersey Notary Public Association, President

Uniform Law Commission

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

Robyn Veasey, Deputy Public Defender, Office of the Public Defender, Office of Parental Representation

Penny Venetis, Director, Rutgers School of Law – Newark, International Human Rights Clinic

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

Wendy S. Whitbeck, Principal Counsel, Senate Law & Public Safety Committee Aide, Office of Legislative Services

Henry Wolfe, Esq., Wolfe Law Firm

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



2. – Members and Staff of the NJLRC in 2014



2. – Members and Staff of the NJLRC in 2014

The members of the Commission are:

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

A principal at the firm of Porzio, Bromberg & Newman, P.C., Vito A. Gagliardi, Jr., chairs the firm's Employment Law Team and the Education Law Team. He represents school districts in numerous matters and handles employment law matters for public and private sector clients in state and federal courts, before state and federal agencies, and before arbitrators. Mr. Gagliardi litigates and counsels clients in every area of labor and employment law, including issues of restrictive covenants, harassment, discrimination and whistleblowing. He represents management in labor grievances and before PERC. Mr. Gagliardi regularly counsels clients on reduction in force and on employment issues related to restructuring and consolidation. He also handles investigations by management into allegations of employee wrongdoing. Mr. Gagliardi received his undergraduate degree from the University of Notre Dame in 1986 and graduated from the Washington & Lee University School of Law cum laude in 1986 where he was a member of the Order of the Coif, and Captain of the National Moot Court Team.

Andrew O. Bunn, Attorney-at-Law

A partner at the firm of DLA Piper, Andrew Bunn has a varied litigation practice representing companies in state and federal courts, arbitration and regulatory proceedings, in cases including individual and class-action claims in the areas of consumer complaints, business disputes, contract and policy interpretations, benefit entitlements, sales practices, ERISA, securities, financial instruments, telecommunications, managed care and regulatory disputes. His clients include some of the country's largest life and health insurance companies, financial institutions, telecommunications providers and manufacturers. Mr. Bunn has tried numerous jury and non-jury cases to verdict, and has extensive appellate experience. Mr. Bunn received his undergraduate degree from Kenyon College in 1984 and graduated from the Rutgers School of Law – Newark in 1990, where he served as Managing Editor of the Rutgers Law Review.

Albert Burstein, Attorney-at-Law (*Retired as Commissioner in July 2014*)

A partner at Archer & Greiner, P.C., Albert Burstein is one of New Jersey's most respected attorneys and public servants. Having practiced law for more than four decades, he is experienced in all aspects of estate planning, commercial real estate, business contracts, and litigation relating to business matters. Mr. Burstein counsels clients on estate planning and probate matters including wills and trusts in complex estates. By court appointment he has been administrator of estates where controversies have arisen among potential beneficiaries. Mr. Burstein has litigated matters involving undue influence and mental incapacity. He is also experienced in commercial real estate matters and has represented developers in their financing and leasing needs. Before joining the Commission, he served for ten years in New Jersey's General Assembly, including a term as Majority Leader. Mr. Burstein received both his undergraduate and his law degree from Columbia University.

Hon. Virginia Long, Associate Justice, New Jersey Supreme Court (Retired)

Counsel to Fox Rothschild, retired New Jersey Supreme Court Justice Virginia Long joined the firm after 15 years on the Appellate Division and 12 years on the Supreme Court. Justice Long devotes her efforts to assisting clients with ethics and appellate matters, corporate governance and governmental integrity investigations and to serving as a mediator and arbitrator providing dispute resolution alternatives. She also spearheads the firm's pro bono efforts in New Jersey. Justice Long began her career as a Deputy Attorney General and later served as Director of the New Jersey Division of Consumer Affairs and as Commissioner of the former New Jersey Department of Banking. She also practiced law at the firm of Pitney, Hardin and Kipp. In 1978, she was appointed to the New Jersey Superior Court, where she presided over civil, criminal and family law cases in Union County. From 1983 to 1984, she was the General Equity judge for Mercer, Somerset and Hunterdon counties. In 1984, Justice Long was elevated to the Appellate Division, where she became a presiding judge in 1995. She was appointed to the New

Jersey Supreme Court in 1999 and was confirmed by the Senate for a second term and granted tenure in 2006, retiring in 2012 when she reached the mandatory retirement age. Justice Long received her undergraduate degree from Dunbarton College of Holy Cross in 1963 and graduated from the Rutgers School of Law – Newark in 1966.

Anthony R. Suarez, Attorney-at-Law (*Appointed as Commissioner in July 2014*)

A partner at Werner, Suarez & Moran, LLC, Anthony R. Suarez, specializes in civil litigation, personal injury litigation, estate litigation, municipal government law, and wills. He is a Certified Civil Trial Attorney by the Supreme Court of New Jersey and holds a Diplomate in New Jersey Municipal Law. In addition to his law practice, Mr. Suarez has served as Mayor of Ridgefield for the past 11 years. He received his undergraduate degree from Saint Peter's College in Jersey City, summa cum laude in 1988 and graduated from Fordham University School of Law in New York City in 1993, serving on the Environmental Law Review, and volunteering time with the Fordham Law Community Service Project in New York City.

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

A member of the Senate since 2004, Senator Scutari is an attorney with the Law Offices of Nicholas P. Scutari and has also served the public as: the Prosecutor for the City of Linden, from 2003-present; a member of the Union County Planning Board, from 2000-2004; a member of the Union County Board of Freeholders from 1997-2004; and a member of the Linden Board of Education from 1994-1997. He is the Chair of the Senate Judiciary Committee and a member of the Joint State Leasing and Space Utilization Committee and the Commerce Committee.

John F. McKeon, Chairman, Assembly Judiciary Committee, Ex officio

A member of the Assembly since 2002, Assemblyman McKeon is an attorney and a partner at Hardin, Kundla, McKeon & Polletto and has also served the public as Mayor of the Township of West Orange from 1998-2010 and a member of the West Orange Council from 1992-1998. He is the Chair of the Assembly Judiciary Committee, Vice-Chair of the Environment and Solid Waste Committee, and a member of the Financial Institutions and Insurance Committee.

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

Patrick Hobbs joined the Seton Hall Law faculty in 1990 with a specialty in tax law. He was named Associate Dean for Finance in 1995 and became Dean in 1999. Previously he was a tax attorney with the law firm of Shanley & Fisher in Roseland, New Jersey.

Represented by **Professor Ahmed I. Bulbulia**

Professor Bulbulia received his LL.B. from the London School of Economics and LL.M. from the University of Michigan. He is a barrister at law of the Middle Temple and an advocate before the Supreme Court of South Africa. Professor Bulbulia has published in the areas of corporations and professional responsibility and has taught at the University of New Brunswick, Canada, and as an adjunct professor at Rutgers and New York Law School. He came to Seton Hall in 1972. The courses that he teaches include Public International Law, International Criminal Law, Conflict of Laws, and Contracts.

Ronald K. Chen, Acting Dean, Rutgers School of Law – Newark, Ex officio

Ronald Chen became Acting Dean of the Law School in 2013. Dean Chen returned to the law school in January 2010 after serving for four years as the Public Advocate of New Jersey. Prior to becoming the Public Advocate, Dean Chen was the Associate Dean for Academic Affairs at the law school.

Represented by **Professor Bernard Bell**

Professor Bell received a B.A. cum laude from Harvard and a J.D. from Stanford, where he was notes editor of the Law Review and a member of Order of the Coif. He clerked for Judge Amalya L. Kearsse of the U.S. Court of

Appeals for the Second Circuit and for U.S. Supreme Court Justice Byron R. White, and then practiced with Sullivan and Cromwell in New York. Before coming to Rutgers in 1994, Professor Bell served as senior litigation counsel and, before that, as Assistant U.S. Attorney (Civil Division) in the U.S. Attorney's Office for the Southern District of New York. He has written numerous scholarly articles published in various journals. The courses that he teaches include Torts, Legislation, Administrative Law, Constitutional Law, Law and Mass Communications, Privacy Law, Property, and Separation of Powers Law.

John Oberdiek, Acting Dean, Rutgers School of Law - Camden, Ex officio

John Oberdiek became Acting Dean for a two-year term in July 2014 after serving two years as Vice Dean. Dean Oberdiek is also Associate Graduate Faculty in the Rutgers-New Brunswick Philosophy Department and a Director of the Rutgers Institute for Law and Philosophy. Prior to joining the Rutgers faculty in 2004, he practiced law at the Washington, D.C. firm of Arnold & Porter.

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

The managing partner of Bertone Piccini, Grace Bertone is a graduate of Fairleigh Dickinson University, summa cum laude, and Rutgers University School of Law, Camden, where she served as Editor-in-Chief of the Rutgers Law Journal. She was admitted to the bars of New Jersey and Pennsylvania and related federal districts in 1984. From 1984 to 1985, Ms. Bertone served as Law Clerk to The Honorable Phillip A. Gruccio, Superior Court of New Jersey (Assignment Judge, Atlantic and Cape May Counties). Before founding Bertone Piccini, she was a partner at the firm of McElroy, Deutsch, Mulvaney & Carpenter, LLP. Ms. Bertone has substantial experience in the areas of business acquisitions, general corporate and business counseling, commercial and residential real estate, zoning and land use, environmental counseling and regulatory compliance, banking and commercial lending, foreclosure litigation, estate planning, probate administration, and probate litigation. She also has substantial experience in the analysis and implementation of internal investigations and legal audits.

Former Commissioners:

Daniel F. Becht, Esq.

Peter A. Buchsbaum, Esq.

Albert Burstein, Esq.

Bernard Chazen, Esq.

John J. Degnan, Esq.

Edward J. Kologi, Esq.

Thomas N. Lyons, Esq.

Hugo M. Pfaltz, Jr., Esq.

Hon. Sylvia Pressler, P.J.A.D. (Retired)

Howard T. Rosen, Esq.

Former Ex officio Commissioners:

Roger I. Abrams, Dean, Rutgers School of Law – Newark

Senator John Adler

Assemblyman Peter J. Barnes, III

Elizabeth F. Defeis, Dean, Seton Hall University School of Law

Represented by Professor Robert A. Diab

Roger Dennis, Dean, Rutgers School of Law – Camden

Represented by Hope Cone

Stuart Deutsch, Dean, Rutgers School of Law – Newark

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

Represented by Professor Bernard Bell

Senator William L. Gormley

Assemblywoman Linda R. Greenstein

Assemblyman Walter M.D. Kern

Assemblywoman Marlene Lynch Ford

Eric Neisser, Acting Dean, Rutgers School of Law – Newark

Represented by Professor Robert Carter

Senator Edward T. O'Connor

Ronald J. Riccio, Dean, Seton Hall University School of Law

Represented by Professor William Garland

Paul T. Robinson, Dean, Rutgers School of Law – Camden

Assemblyman David C. Russo

Senator Paul A. Sarlo

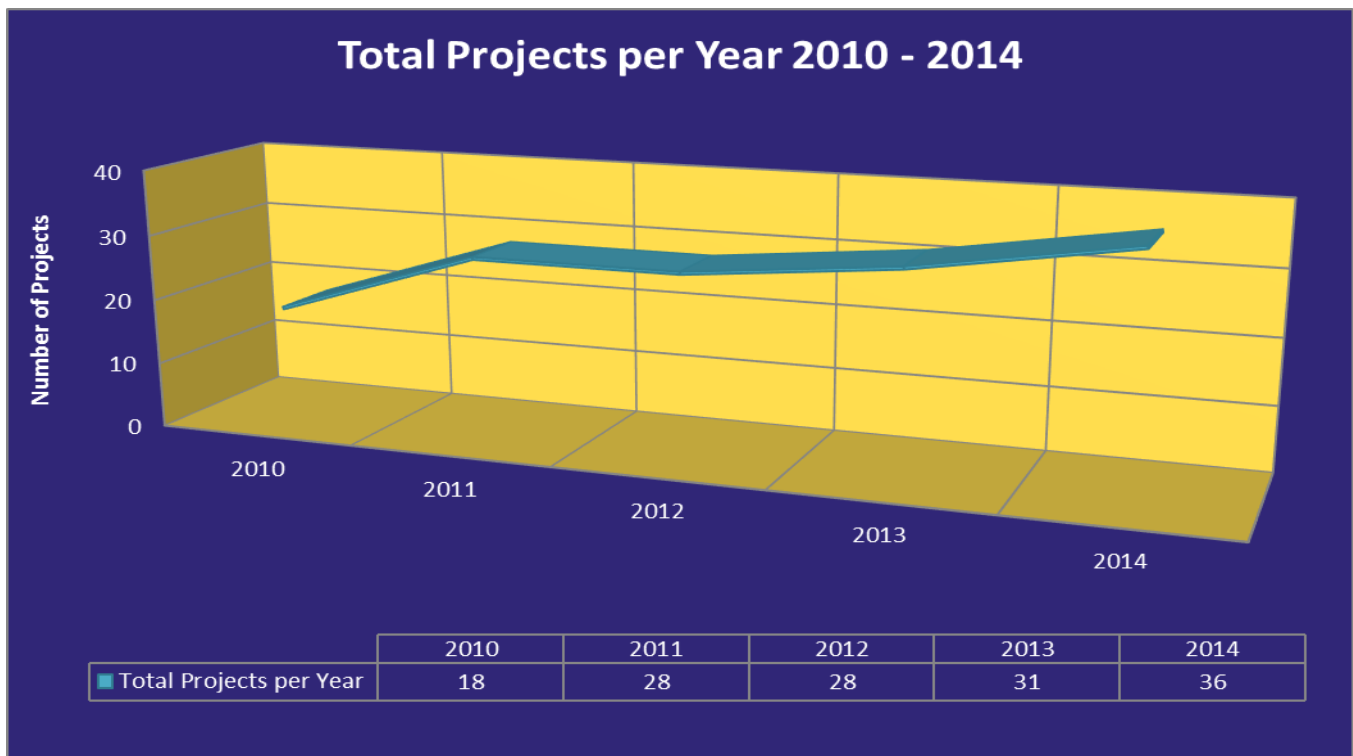
Assemblyman Thomas J. Schusted

Peter Simmons, Dean, Rutgers School of Law – Newark

Richard G. Singer, Dean, Rutgers School of Law – Camden

Rayman Solomon, Dean, Rutgers School of Law – Camden

Assemblyman Gary W. Stuhltrager



The Staff of the Commission is:

Laura C. Tharney, Executive Director

Laura C. Tharney is the Executive Director of the Commission. She joined the Commission as a staff attorney in February 2002 and was named Deputy Director in January 2008 and Executive Director in October 2012. Laura has been a licensed attorney since 1991 and is admitted to practice in New Jersey and New York. Before she began her work with the Commission, Laura engaged in appellate practice at her central-New Jersey law firm, which included appeals to the Supreme Court of the United States, New Jersey Supreme Court, New Jersey Appellate Division, New York appellate courts, administrative agencies and municipal boards and bodies. She graduated from Rutgers School of Law - Newark in 1991.

Jayne J. Johnson, Counsel

Jayne Johnson joined the Commission as a staff attorney in January 2013. Prior to joining the Commission, she worked as a legal fellow with the Institute on Education Law and Policy at Rutgers School of Law - Newark. Jayne is a licensed attorney in New Jersey who started her professional career as a judicial law clerk to the Honorable Lorraine Pullen, J.S.C. and the Honorable Jane Bruskin Cantor, J.S.C., Superior Court of New Jersey, Law Division, Middlesex County. She later worked as a pro bono law clerk to the Honorable Claire C. Cecchi, D.N.J., United States District Court of New Jersey. Jayne studied abroad in Collonges-sous-Salève, France. She is a graduate of Oakwood University, B.A., International Studies and Rutgers School of Law - Newark.

Vito J. Petitti, Counsel

Vito J. Petitti has been a staff attorney with the Commission since July 2013. He has been a licensed attorney since 2009 and is admitted to practice in New Jersey and California. Prior to his work with the Commission, he served as a family law attorney with Central Jersey Legal Services in Elizabeth, New Jersey. Upon returning from Iraq War service, Vito retired as a Commander in the United States Navy and attended Thomas Jefferson School of Law, in San Diego, California, where he practiced family law and taught California bar review courses. Still a member of TJSL's adjunct faculty, Vito returns to San Diego periodically to teach a mediation course. He graduated from Kutztown University of Pennsylvania with a degree in Criminal Justice in 1982.

Susan G. Thatch, Counsel

Susan Thatch joined the Commission as a staff attorney in 2014. She was admitted to practice in 1997 and is licensed in New Jersey and New York. Prior to joining the Commission, Susan was in private practice at the Newark office of McCarter & English and, subsequently, at the New York office of Milbank, Tweed, Hadley & McCloy specializing in real estate and other commercial transactions. She is a graduate of Rutgers College, B.A., English and Political Science, and attended Rutgers School of Law – Newark, where she served as an Editor of the Law Review.

Linda Woodards-French, Executive Assistant

Linda Woodards-French joined the Commission in 2013. She began her career in the legal field working as a Certified Legal Assistant for firms in New Jersey, New York, and Washington, D.C. After that, she served as a Team Leader for Judges in New Jersey's Superior Court, Hudson County, for nearly a decade. Linda is a graduate of Pillar College, with a B.A. in Business Administration and Management, and in addition to her experience in the legal field she holds several certifications in theology.

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

John Cannel joined the Commission as its first Executive Director when the Commission began work in 1987. He served in that capacity until he retired in October 2012. Although now retired, he continues to volunteer his time with the Commission. Prior to joining the Commission, John spent almost 20 years with New Jersey's Office of the Public Defender, serving in a variety of positions involving appellate and trial representation and administration.

Some of the work identified in this Annual Report benefitted from the contributions of former Staff member Jordan Goldberg, Counsel, who left the Commission to pursue other opportunities in 2014.

Student Legislative Law Clerks and Externs:

In addition to the full- and part-time Commission Staff members, law students from New Jersey's three law schools play a significant role in the work of the Commission. With the supervision and assistance of the NJLRC attorneys, law students are afforded the opportunity to conduct legal research and outreach to potential commenters, draft proposed statutory language and reports for submission to the Commission, and present their findings at public meetings of the NJLRC. The Commission was fortunate to have the assistance this year, as in past years, of bright, motivated, and dedicated students with excellent research and writing skills whose efforts have increased the Commission's ability to work in numerous different areas of the law. The students who worked with the NJLRC in 2014 are:

Alexander S. Firsichbaum, Rutgers Law School – Newark, Legislative Law Clerk - 2014

Alexandra Kutner, Seton Hall University School of Law, Law Student Extern – Spring 2014

Mark J. Leszczyszak, Seton Hall University School of Law, Legislative Law Clerk - 2014

Adam Lipps, Seton Hall University School of Law, Law Student Extern – Fall 2014

Chelsea Perdue, Seton Hall University School of Law, Law Student Extern – Spring 2014

Frank Ricigliani, Seton Hall University School of Law, Law Student Extern – Spring 2014

Shani Sarjeant, Rutgers Law School – Camden, Law Student Extern – Fall 2014

3. – History and Purpose of the Commission



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 139 Reports with the Legislature and one with the New Jersey Supreme Court. Fifty of the filed reports have been enacted into law, and the Report filed with the Supreme Court resulted in a change to the Court Rules.

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.*

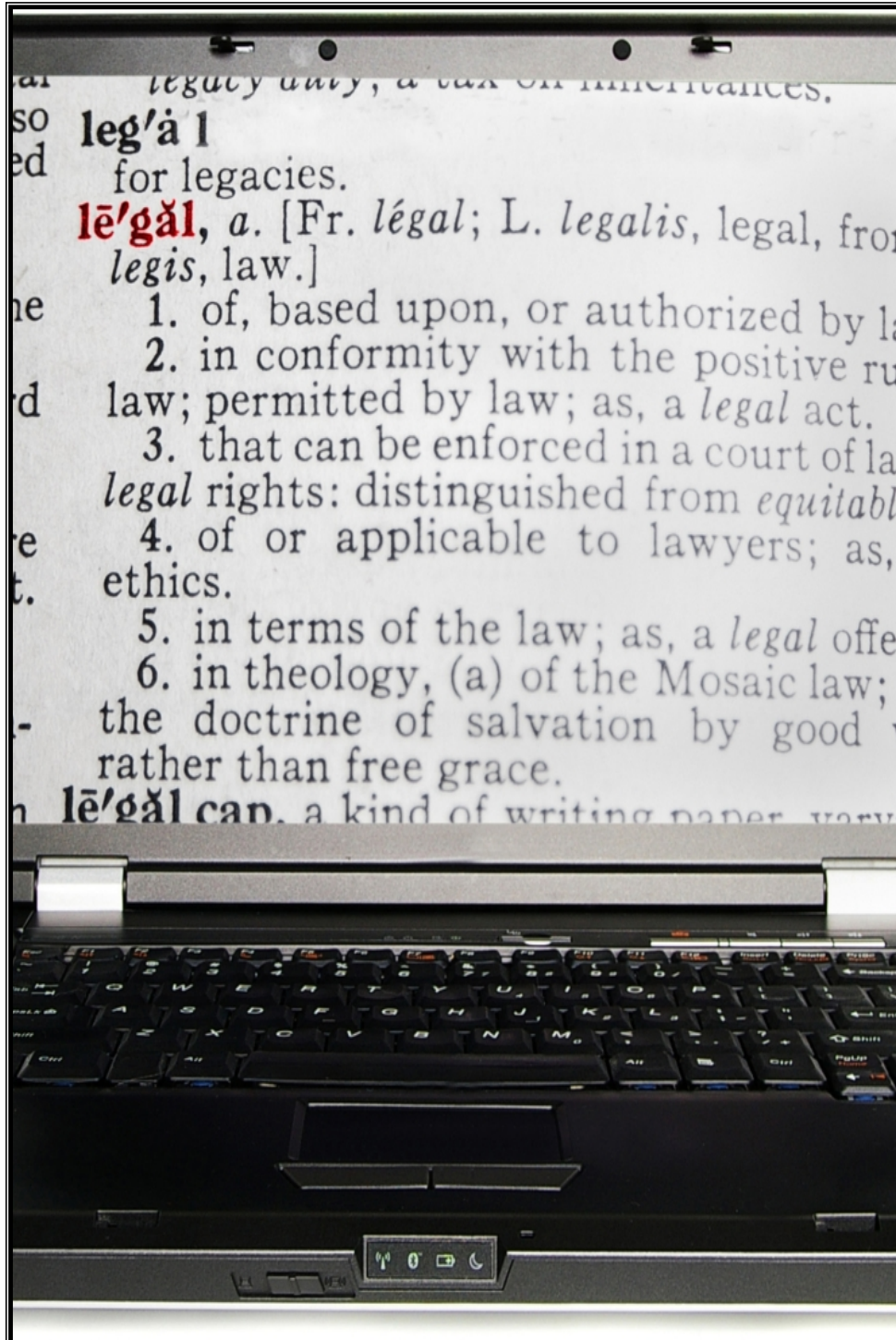
In compliance with its statutory obligations, the NJLRC considers recommendations from the American Law Institute, the Uniform Law Commission (formerly the National Conference of Commissioners on Uniform State Laws), “other learned bodies, and from judges, public officials, bar associations, members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

To carry out its work, the NJLRC consists of nine Commissioners including the Chair of the Senate Judiciary Committee, the Chair 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 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 a mix of full-time and part-time employees including a full-time Executive Director, one full-time Counsel, two part-time Counsel, and a part-time Executive Assistant.

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 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.

4. – Enacted Reports and NJLRC Case and Journal References



4. – Enacted Reports and NJLRC Case and Other References

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 46 bills based upon 50 Final Reports and Recommendations of the Commission. The Commission's work also resulted in a change to the Court Rules in 2014. The projects enacted (or otherwise implemented) since 2011 are:

2014

- *New Jersey Declaration of Death Act* (L.2013, c.185) – The Report proposed removal of the statutory authority of the Department of Health and the State Board of Medical Examiners over medical standards governing declarations of death on the basis of neurological criteria.
- *New Jersey Family Collaborative Law Act* (L.2014, c.69) – The Report recommended enactment of new statutory language designed to create a consistent framework for the use of the collaborative process in family law matters that is intended to provide important consumer protections and an enforceable privilege between parties and non-attorney collaborative professionals during the negotiation process.
- *General Repealer (Anachronistic Statutes)* (L.2014, c.69) – The Report recommended repeal of assorted anachronistic or invalid statutes including: some that are invalid because they have been found unconstitutional or have been superseded; some that may be legally enforceable but which have ceased to have any operative effect with the passage of time; some that are anachronistic because they relate to offices or institutions which no longer exist; some that are anachronistic because they deal with problems which were important at one time but which have ceased to be relevant to modern society; and others that deal with problems that still have relevance but which do so in a way that has become unacceptable.
- *Uniform Interstate Depositions and Discovery Act* (R. 4:11-4 and R. 4:11-5) – The Report recommended adoption of the UIDDA in New Jersey, with modifications to accommodate New Jersey practice but, although the Commission ordinarily makes recommendations to the Legislature, the better course of action in this case was a revision to the Court Rules to provide a simple and convenient process for issuing and enforcing deposition subpoenas.

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 cover a fund transfer 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 to a
-

person located in a foreign country requested by a consumer and 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. When the federal law changed in February 2013, without the modification to Article 4A, 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.

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)
 - Construction Lien Law (L.2010, c.119)
 - 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. Neopl*, 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)
- *Gebroer-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 (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 and Scholarly Reference Materials that Mention the NJLRC:

The following is a list of Journal articles and other scholarly reference materials in which the New Jersey Law Revision Commission is mentioned:

- Laura C. Tharney & Jayne J. Johnson, *All Hands on Deck: New Jersey Law Revision Commission Recommends Modified Uniform Laws to Safeguard the Public and Address Disasters and Their Aftermath*, 38 SETON HALL LEGIS. J. 339 (2014)
- Sharon Rivenson Mark & Mary Wanderpolo, 45 NEW JERSEY PRACTICE SERIES, *Elder Law—Guardianships and Conservatorships* §§22:28, 32:1 (2014)
- Elga A. Goodman, Kristina K. Pappa & Brent A. Olson, 50 NEW JERSEY PRACTICE SERIES, *Business Law Deskbook* §15:1 (2014)
- Myron C. Weinstein, 29 NEW JERSEY PRACTICE SERIES, *Law of Mortgages* §§ 7.2, 7.3, 7.5, 9.2, 9.3, 9.4, 10.0.30, 10.5, 10.6, 10.11, 10.15, 10.20 (2014)
- Henry C. Walentowicz & Matthew S Slowinski, 13 NEW JERSEY PRACTICE SERIES, *Real Estate Law and Practice* §14:4 (2014)

- Blake Sherer, *The Maturation of International Child Abduction Law: From the Hague Convention to the Uniform Child Abduction Prevention Act*, 26 J. AM. ACAD. MATRIMONIAL LAW 137 (2013)
 - Clark E. Alpert, GUIDE TO NJ CONTRACT LAW § 4.1.2 (Clark E. Alpert et al. eds., 3rd ed. 2013)
 - 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)
 - Gary N. Skoloff, Laurence J. Cutler & Bari L. Weinberger, NEW JERSEY FAMILY LAW PRACTICE § 12.2C (14th ed. 2010)
 - 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)
 - Symposium, *The Uniform Athlete Agents Act*, 13 SETON HALL J. SPORTS L. 345 (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)
-

- Symposium, *Understanding the Uniform Computer Information Transactions Act and the Uniform Electronic Transactions Act: Mass Market Transactions in the Uniform Computer Information Transactions Act*, 38 DUQ. L. REV. 371 (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)
 - Symposium, *Uniform State Laws: A Discussion Focused on Revision of the Uniform Commercial Code Moderator*, 22 OKLA. CITY U. L. REV. 257 (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)
 - Lawrence F. Flick, II, *Leases of Personal Property*, 45 BUS. LAW. 2331 (1990)
-

5. – Final Reports and Recommendations 2014



5. – Final Reports and Recommendations 2014

Base Salary

In December 2014, the Commission released a Final Report containing a proposed clarification of N.J.S. 40A:10-21. The Commission's work in this area resulted from the court decision in *Paterson Police PBA Local 1 v. City of Paterson*, 433 N.J. Super. 416 (App. Div. 2013).

The dispute in *Paterson Police PBA* arose in connection with the required amount of employee contribution toward health care benefits. The court's analysis focused on N.J.S. 40A:10-21, which requires that "employees of an employer shall pay 1.5 percent of base salary [for] health care benefits coverage provided" but fails to provide a statutory definition for the term "base salary." The Paterson Police PBA Local 1 asserted that base salary only includes an officer's base contractual salary. In contrast, the City of Paterson maintained that base salary should be interpreted as an officer's base pensionable salary, which includes both contractual salary and additional items of compensation such as longevity incentives, educational incentives, and night shift and detective pay differentials.

After consideration of the possible meanings of the term "base salary", the court concluded that it should be read in a manner consistent with the definition contained in N.J.S. 34:13A-16.7(a), which included the base contractual pay plus additional identified items of compensation such as longevity or length or service increments. The Commission recommended adding clarifying language to the statute consistent with the court's determination.

Equine Activities Liability Act

In May 2014, the Commission released a Final Report regarding the Equine Activities Liability Act ("Equine Act") and recommending modification of the current statute to address an issue raised by the New Jersey Supreme Court in *Hubner v. Spring Valley Equestrian Center*, 203 N.J. 184 (2010). The Court identified a latent ambiguity in the overall meaning of the Equine Act, whereby its assumption of risk provisions conflicted with its exceptions to limitations on operator liability. The Commission Report consolidated the assumption of risk provisions and added new language specifying affirmative duties and responsibilities of equestrian activities operators and participants.

The Equine Act, N.J.S. 5:15-1 et seq., 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." 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." 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."

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. 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), the Commission conducted a detailed study of those statutes in advance of its recommendation.

Judgments and Enforcement

In November 2014, the Commission released a Final Report concerning Judgments and their Enforcement. The Commission's review of statutes concerning judgments continued an earlier effort to revise Title 2A provisions pertaining to the courts and the administration of civil justice. Prior recommendations made by the NJLRC were not adopted, and many of the current sections of the statute remain outdated, unclear and superseded in practice. Moreover, the statutes and the Court Rules do not reflect the totality of current practice or provide accurate guidance to a party trying to collect a judgment.

"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
(2013)*

The proposed revision is a comprehensive statement of the law relating to collection of judgments. It articulates the processes by which a judgment or order is recorded and by which information concerning subsequent events that affect the judgment are added to the record. The Commission also proposes clarifying this area of the law by revising terminology, and requiring that the collection procedure be driven by written collection instructions from the judgment creditor to the collection officer. This latter recommendation is an innovation that conforms the statutes to recent case law and practice. At one time, a sheriff might have been presumed to know the nature and location of the debtor's assets within the county. 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 also recommended enactment of a homestead exemption that would protect a modest residence from being taken by a creditor to satisfy a judgment. New Jersey is one of only three states that have no such exemption. The Report does not take a specific position as to other exemptions, but it explains that the current \$1,000 personal property exemption has become inadequate and provides data to assist the Legislature in making the policy-laden decisions involved in any change to that amount. The Commission's proposal also revises the unworkable system of appraisal that accompanies present exemption procedures so that when neither party objects, the collection officer's informal evaluation of items of personal property may be accepted as the basis for claiming exemptions.

Juvenile Sentencing

The Commission released a Final Report in November 2014 pertaining to N.J.S. 2A:4A-44d.(3). The Commission's work stems from the case of *In re K.O.*, 217 N.J. 83 (2014), in which the New Jersey Supreme Court considered whether an extended-term sentence may be imposed on a juvenile if the juvenile has been adjudged delinquent on only one prior occasion. The Court considered the statutory scheme as a whole, and the plain language of N.J.S. 2A:4A-44d.(3), and found that in order to impose an extended-term sentence, the statute required two prior adjudications of delinquency, separate from the qualifying offense for which the juvenile is being sentenced.

The Court noted that the plain language of the statute, using the past tense in the following two phrases - "was adjudged delinquent" and "was previously committed" - indicates that the determination results from the juvenile's previous adjudication and not the present adjudication. Furthermore, the Court found a lack of guidance from the legislative history to indicate that the Legislature intended to include the qualifying offense as one of the two adjudications necessary for extended-term sentencing. The Court unanimously agreed that the statute requires two *prior* adjudications of delinquency, one of which must have resulted in incarceration in a juvenile or adult facility, for the imposition of an extended-term sentence. The Court noted that, as currently written, the statute is subject to more than one interpretation.

To resolve the ambiguity, the Commission's Final Report recommended adding the term "previously" to subsection d.(3) so that it reads, in relevant part, "if it finds that the juvenile was adjudged delinquent *previously* on at least two separate occasions".

New Jersey Notaries Public Act/RULONA

In September 2014, the Commission released a Final Report proposing comprehensive revisions of the New Jersey Notaries Public Act, N.J.S 52:7-10, et seq., based on the Revised Uniform Law on Notarial Acts (RULONA). The Uniform Law Commission approved and recommended the RULONA in July 2010 for enactment in all states, seeking to provide a uniform framework that will strengthen the integrity of the notarial process amidst the rapid growth of business and technology. The RULONA was enacted in five states: North Dakota, Iowa, Oregon, Pennsylvania, and West Virginia; and, in 2014, introduced in Georgia. The RULONA has received strong support from the National Notary Association, the American Society of Notaries, and dozens of state notary associations.

During the course of preparing the NJLRC Final Report, national and state notary associations, business organizations, and commissioned New Jersey notaries public provided input and comment for the Commission's consideration. The Final Report includes: (1) all of the RULONA provisions, with the exception of Section 3 – Applicability, Section 28 – Notary Public Commission In Effect; and Section 30 – Uniformity and Application and Construction; (2) changes to the law made by the recently enacted P.L. 2014, c.48; (3) provisions recommended by commenters, some of which incorporate language from bills introduced in prior legislative sessions; and (4) language from the existing state statute to preserve long-standing New Jersey standards of practice.

The NJLRC's recommendations most significantly add the following new sections to the existing statute: (1) a definitions section; (2) a journaling provision; (3) a course of study requirement; (4) an examination requirement for applicants; and (5) a continuing education course requirement for notaries public renewing their commission.

Sexual Offenses

In December 2014, the Commission released a Final Report recommending changes to the provisions of Title 2C that pertain to sexual offenses, N.J.S. 2C:14-1 – 2C:14-12. The Commission worked in this area of the law over a period of years, first releasing a Tentative Report in April 2012 that was subsequently revised and re-released in April 2013 and October 2013. The Report 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. 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 response to 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 concerning 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 to constitute sexual assault.

In *State in Interest of M.T.S.*, 129 N.J. 422 (1992), 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. After reviewing the legislative history, the Court 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 *State v. Triestman*, 416 N.J. Super. 195 (App. Div. 2010), the Appellate Division extended that reasoning to the crime of sexual contact. The Commission Report recommends the elimination of the term “physical force” and instead focuses on the issue of consent for crimes for which consent constitutes a defense.

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*, 123 N.J. 550 (1991), 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 New Jersey Legislature and many across the country have worked to decrease discrimination against those with disabilities. 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. The NJLRC 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 when they cannot.

Special Election – Obsolete Special Election Language

In April 2014, the Commission released a Final Report regarding N.J.S. 40A:4-45.14, the local budget cap law. The Commission’s work on this statute began as a result of the decision in *Roseff et al. v. Byram Township et al.*, 432 N.J. Super. 8 (App. Div. 2013), in which the Appellate Division addressed the legal question of whether a municipal budget ordinance is subject to a particular type of local referenda. 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.

N.J.S. 40A:4-45.3 was originally enacted in 1976. It 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. 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.” 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, referenda 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%. 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. During the course of the amendments, the Legislature did not remove the linked special election language from N.J.S. 40A:4-45.14. 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.” The Commission approved a Final Report that recommends eliminating the last sentence of N.J.S. 40A:4-45.14 as obsolete.

Title 9 – Child Abuse and Neglect

In September 2014, the NJLRC released a Final 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 incorporated in the Report, 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 recent decisions of the

“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.
(2013)*

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 on which to do so.

Because the current law was enacted over a long period of time, there are provisions that no longer reflect current practice; these have been proposed for deletion, or rewritten, as appropriate. The many overlapping provisions of the law have been consolidated. The Report is divided into chapters and it consolidates provisions and organizes the material by grouping related subjects together. 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.

The revisions proposed in the Commission's Report 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; Court Appointed Special Advocates of New Jersey; and members of the public with a deep interest in issues raised by child abuse and neglect.

Underground Facility Protection Act

In September 2014, the Commission released a Final Report based on the New Jersey Supreme Court's decision in *Jersey Cent. Power & Light Co. v. Melcar Utility Co.*, 212 N.J. 576, 581 (2013) concerning subsection d. of the Underground Facility Protection Act (UFPA), N.J.S. 48:2-73, et seq. 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. The UFPA carries significant penalties for those who violate its provisions. Subsection d. of the UFPA was added in 2005 and it established liability for any underground facility operator who fails to mark its facilities, and for any excavator who damages an underground facility. Subsection d. also requires that disputes less than \$25,000 be submitted to the Office of Dispute Settlement (ODS) for alternative dispute resolution.

The Supreme Court considered subsection d., in the context of a utility company that filed a claim against a third-party excavator for damage to the company's underground facilities. The Court ruled that a property damage claim is a common law negligence cause of action and the right to a trial by jury attaches. The Court held that subsection d. was "constitutionally flawed" because it lacked a trial *de novo* provision. The Court acknowledged that "the statute, read as a whole, manifests an unmistakable legislative intent that parties with claims of damage to underground facilities valued at less than \$25,000 must present those claims to the ODS, unless the parties mutually agree upon a different forum for dispute resolution." The NJLRC Final Report recommends adding language to N.J.S. 48:2-80, subsection d., to provide for the right to a trial *de novo*, codifying the Court's decision and preserving the legislative intent of the statute.

Uniform Interstate Family Support Act

In December 2014, the Commission released a Final Report pertaining to the Uniform Law Commission's 2008 amendments to the Uniform Interstate Family Support Act (UIFSA). These amendments modify the current version of UIFSA's international provisions to comport with the obligations of the United States under the 2007 Hague Convention on Maintenance. In 2014, the Convention was implemented, and federal legislation required all states to enact the 2008 UIFSA Amendments as a condition of continuing to

receive federal funds for state child support programs. The effective date for enactment must be no later than April 1, 2016, and the Department of Human Services and the Administrative Office of the Courts need some time after enactment to train personnel and prepare forms. As a result, it is desirable that the amendments be considered by the Legislature as soon as possible.

The Commission consulted with the Department of Human Services and the Administrative Office of the Courts to determine the appropriate New Jersey specific provisions to be inserted into the Uniform Act. The draft of the Act has been reviewed and generally approved by both offices. After discussion with the Office of Legislative Services, the amendments were drafted as a new law to replace the current version of the Uniform Interstate Family Support Act, now compiled as 2A:4-30.65 et seq. That approach simplified drafting. In addition, a replacement law allowed the preservation of the numbering and captions of the uniform law, which will be a help to those who need to use the law in interstate support matters. The Department of Human Services, the Administrative Office of the Courts, and the Office of Legislative Services all support this approach.

6. – Tentative Reports



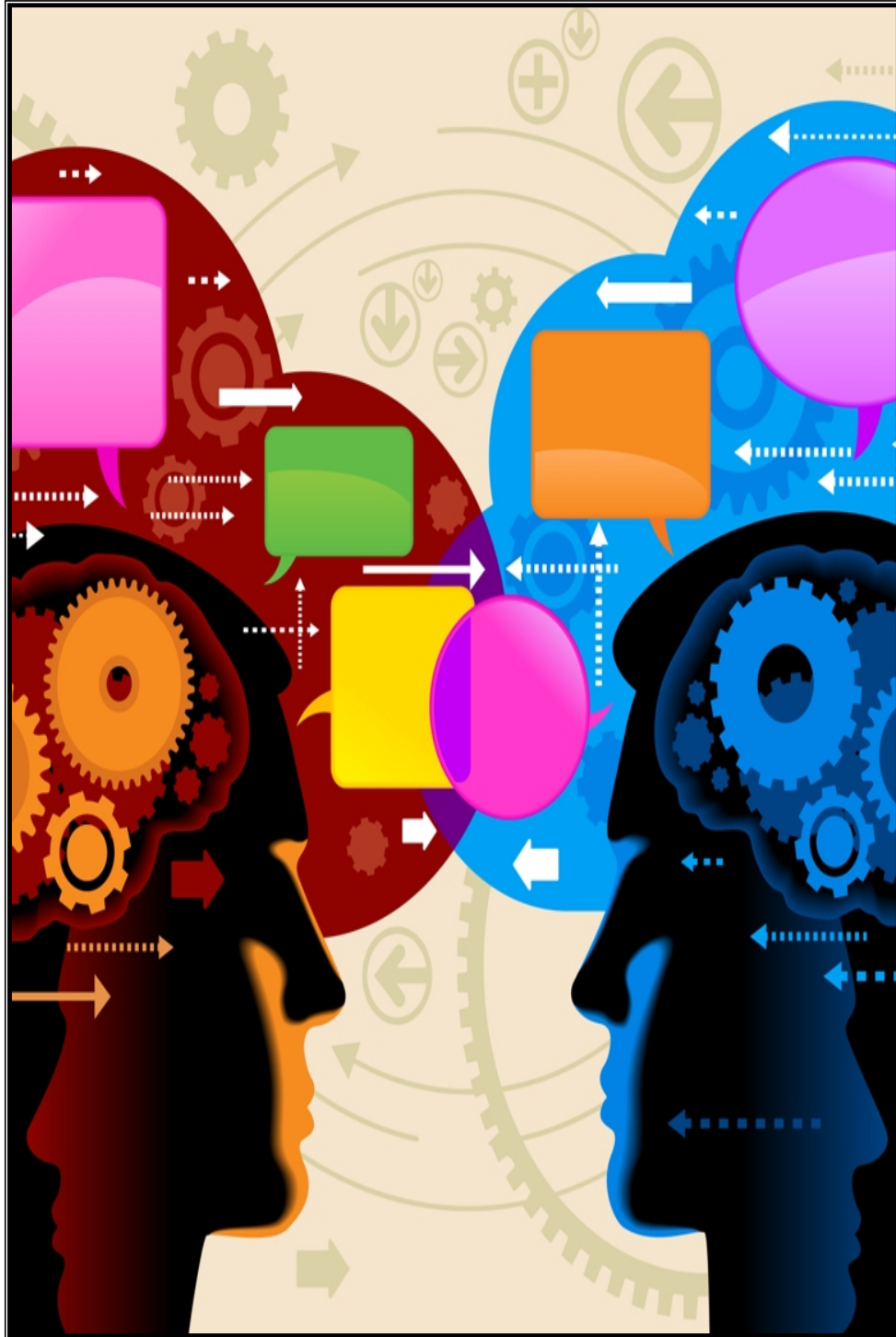
6. – Tentative Reports

Uniform Voidable Transactions Act

In 2014, the Uniform Law Commission approved and recommended for enactment in all states amendments to the 1984 Uniform Fraudulent Transfer Act (UFTA). The October 2014 amendments are incorporated in the Uniform Voidable Transaction Act (UVTA). The amendments provide narrowly tailored revisions to: (1) revise the title to more accurately depict the transactions covered under the act; (2) add a choice of law provision; (3) improve provisions for determining a debtor’s insolvency; (4) provide guidance regarding key evidentiary matters; and (5) address emerging legal developments involving “series organizations.”

The Commission began drafting in December 2014 to incorporate the amendments to the existing New Jersey statute, N.J.S. 25:2-20, et seq., which codified the UFTA in 1989. A Tentative Report was prepared by Staff and the results of continued outreach and research will be provided for Commission consideration in 2015.

7. – Work in Progress



7. – *Work in Progress*

Ante-mortem probate

The Commission authorized work in January 2014 on a project based upon the New Jersey Law Journal article by Glen R. Kazlow et al., *Ante-Mortem Probate: Why Wait Until It's Too Late?*, 214 N.J.L.J. 1051 (2013), which described a policy approach adopted in the states of Alaska, Ohio, Arkansas, and North Dakota. In contrast to New Jersey, these States permit a testator to preemptively validate a will during his or her lifetime by petitioning the court for ante-mortem probate. While the process and effect varies in each jurisdiction, the existence of ante-mortem probate provides an opportunity for testators in those jurisdictions (especially those making unconventional bequests) to prevent a will contest after their death. Such an approach is beneficial in that it obviates the evidentiary problem inherent to traditional post-mortem probate and permits the realization of the testator's intent. However, detractors warn that raising probate matters during the testator's lifetime could lead to family disturbances and could potentially waste judicial resources.

Staff anticipates delivering a Tentative Report to the Commission in 2015 detailing the historical and statutory background relating to ante-mortem legislation and analyzing whether such a statute would be beneficial to New Jersey testators.

Clarification of Tenure Issues

In July 2014, the Commission authorized work on a project to conduct research and possibly clarify the language of N.J.S. 18A:17-2, the statute by which certain New Jersey school employees obtain tenure. This project springs from the application of the statute in three separate cases involving school secretaries attempting to retain tenure rights.

In the first case, a secretary was found to have forfeited tenure rights when she voluntarily transferred to a different tenurable position. In the second case, a tenured school district clerk accepted a separately tenurable secretary position and was subsequently involuntarily returned to her clerk position. She did not automatically obtain tenure as a secretary, but was found to have retained her tenure as a clerk. In the third case, a tenured secretary was found to have forfeited tenure rights when she voluntarily transferred to a different, non-tenurable position.

In its current state, N.J.S. 18A:17-2 does not address the tenure rights of clerks, secretaries, and certain other non-teaching school employees in voluntary transfer and promotion situations. A Tentative Report is anticipated for early 2015.

Collateral Consequences of Criminal Convictions

In September 2011, the Commission authorized a thorough review of New Jersey's statutes and administrative code provisions 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 expungement statute had no effect on the forfeiture statute.

As it has developed, the Commission's work in this area of the law consists of three parts. The first part involves proposed modifications to the language of the Rehabilitated Convicted Offenders Act (RCOA) 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.

"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
(2013)*

In November 2014, Staff provided an update to the Commission regarding the ongoing interest in this area. The American Bar Association's Criminal Justice Section, prompted by a provision in the Court Security Improvement Act of 2007, created an interactive internet resource called the "National Inventory of the Collateral Consequences of Conviction". In addition, two new books were published recently regarding Collateral Consequences – one focusing nationally, the other with a focus solely on New Jersey. New Jersey legislation also indicates a continuing interest by the Legislature in the challenges faced by those with a criminal history. In addition to State-wide research, Staff searched for similar provisions enacted by other states. This search revealed that only fifteen states have enacted a similar provisions to date.

Work on this project is ongoing and a Tentative Report regarding the RCOA provisions is planned for early 2015.

Consumer Fraud Act

The Commission began work in January 2014 on a project relating to New Jersey's Consumer Fraud Act (CFA). Although the basic intention of the CFA is to expand protections for New Jersey customers, it has been subject to hundreds of amendments in the 50 years since its enactment. Additionally, the CFA has spawned extensive litigation in New Jersey courts. As a result, the CFA now constitutes over one hundred pages of statutory language riddled with ambiguities and redundancies.

An area of particular concern is the CFA provision that has allowed victorious litigants to collect treble damages and attorney's fees for even technical violations of the Act. Significant case law has developed from this provision and, as currently applied by the courts, treble damages can be awarded for technical violations provided the plaintiff can establish an "ascertainable loss" which forms a basis for the damage award. Nevertheless, as the NJ Supreme Court noted, "[n]otwithstanding the importance of [the term] ascertainable loss, we find sparse guidance in the statutory text." *D'Agostino v. Maldonado*, 216 N.J. 168, 190 (2013).

Work on this project is ongoing as Staff endeavors to revise and restructure the CFA in order to ensure better clarity, excise redundancy, and attempt to address ambiguities identified by case law and legal scholars.

New Jersey Franchise Practices Act

The Commission began work in April 2014 on a project pertaining to the New Jersey Franchise Practices Act (FPA) as a result of the Court's determination in *Navraj Rest. Group, LLC v. Pancho's Franchise Corp.*, 2013 WL 440837 (D.N.J. Aug. 15, 2013).

In light of the inherent imbalance of power between franchisees and franchisors, the FPA was enacted to regulate franchise arrangements. The work of the Commission focuses on section 7.3 of the FPA, which makes presumptively invalid in a motor vehicle franchise agreement any provision that requires dispute resolution under the FPA in an out-of-state forum as well as any provision that requires arbitration. Subsequent developments have led to confusion over whether these provisions were meant to be restricted solely to franchises concerning motor vehicles, and also whether the FPA restriction on arbitration was unconstitutional.

Staff's research answered these questions in the affirmative, and proposed revisions to clarify the FPA were drafted accordingly. The proposed modifications are limited in scope and a Tentative Report is anticipated in early 2015.

New Jersey Property Liability Insurance Guaranty Association Act

In April 2014, the Commission authorized work on a project to clarify the language of the New Jersey Property-Liability Insurance Guaranty Association Act (PLIGAA), after considering the Appellate Division's decision in *Oyola v. Xing Lan Liu*, 431 N.J. Super. 493 (2013). The purpose of the PLIGAA is to minimize financial loss to claimants or policyholders because of the insolvency of an insurer, and to administer and pay claims asserted against the Unsatisfied Claim and Judgment Fund.

The plaintiff in *Oyola* argued that, by statute, the workers' compensation check he received, for \$171,074, for injuries sustained in a car accident, should have been credited against his total damages, obliging the Property Liability Insurance Guaranty Association (PLIGA) to pay the difference between total damages and workers' compensation, stipulated to be at least \$85,000. PLIGA countered that the statute should have been applied in such a way that the payment would have first offset the amount of PLIGA's obligation to replace the \$85,000 lost as a result of the insolvent insurer, effectively nullifying its obligation to *Oyola*. The Court found the relevant statutory language ambiguous, saying that it was susceptible to more than one interpretation. A Tentative Report is anticipated in 2015.

Prevention of Domestic Violence Act

The Commission began work in June 2014 on a project involving the Prevention of Domestic Violence Act (PDVA), N.J.S. 2C:25-17 et seq. The Commission's work stems from a series of cases, the most recent of which is *S.P. v. Newark Police Dept.*, 428 N.J. Super. 210 (App. Div. 2012), in which the Appellate Division considered whether cohabitants living on the same floor of a boarding house are "household members" covered by the statute. The Court, employing a factors-based test developed from over 20 years of case law in this area, held that the plaintiff and her alleged attacker were "household members" under the PDVA.

The PDVA was originally enacted in 1991 to prevent “violence that occurs in a family or family-like setting” and “to assure the victims of domestic violence the maximum protection from abuse the law can provide.” Complainants are entitled to the protections of the Act if: (1) they are the alleged victims of one the fourteen enumerated crimes which constitute “domestic violence,” and (2) they meet the definition of a “victim of domestic violence,” as defined in the Act.

A “victim of domestic violence” is defined as “any person who is 18 years of age or older . . . and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a *present or former household member*”. In 1994, the Legislature amended the Act to provide teenagers who encounter abuse in the dating context the same protections offered to other domestic violence victims. Later, in 1994, the Legislature extended coverage to victims of domestic violence who are pregnant with their attacker’s child. Unlike other state domestic violence statutes, the PDVA does not define “dating relationship” or “present/former household members.” The statute also does not list any facts or circumstances that courts should consider in making a determination as to whether a dating relationship exists between the parties. Consequently, New Jersey courts have been responsible for defining the parameters of these phrases and expanding the statute’s reach to ensure that it protects victims as intended by the Legislature.

“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)
(2013)*

Commission work on this project is ongoing. Staff is monitoring pending legislation in this area and conducting research and outreach in order to draft an appropriate proposal for the Commission to consider in 2015.

Sales and Use Tax Act

This project results from the New Jersey Appellate Court decision *Air Brook Limousine, Inc. v. Director, Division of Taxation*, 2012 WL 3166607 (App. Div. 2009), *cert. denied*, 213 N.J. 568 (2013) which declined to read New Jersey’s Sales and Use Tax Act, N.J.S. 54:32B-8.28, *in pari materia* with the New Jersey’s Public Utility Laws and Motor Vehicle Laws.

Air Brook centered on a tax dispute involving a car service company that provides inter- and intrastate regular, charter, and special transportation. The company argued that it was not required to pay Sales and Use Tax on the purchase and repair of its sedan-style cars and limousines for the period from January 1, 1998, through December 31, 2001, because its vehicles were entitled to exemption as “buses” pursuant to N.J.S. 54:32B-8.28. The term “buses” is not defined in the Sales and Use Tax statute. Both the Tax Court and Appellate Division held that *Air Brook*’s sedans and limousines did not qualify as a “bus” as required for tax exemption pursuant to N.J.S. 54:32B-8.28, but noted that “[g]iven the risk of impinging on the legislative function, [the court] considers it ‘better to wait for necessary corrections by those authorized to make them, or in fact, for them to remain unmade, however desirable they made be.’”

While the Appellate Division chose to interpret the term “bus” in accordance with its ordinary meaning, the Commission authorized a project to determine whether it may be preferable to statutorily define this term to prevent confusion and provide greater certainty to operators. Commission work on this issue is ongoing.

Sentencing – Title 39, Licensing

This project resulted from the New Jersey Superior Court's holding in *State v. Carreon*, in which the Court was asked to interpret the penalty provision of N.J.S. 39:3-10, the statute governing driver's licenses. In *Carreon*, the defendant was charged with two traffic infractions, one of which was driving without a license under N.J.S. 39:3-10. The defendant pled guilty to driving without a license. The municipal court judge imposed a fine of \$756 and a 10-day jail term after defendant's driving record indicated that this was his third conviction for driving without a license. Defendant appealed to the Superior Court, Law Division, Criminal Part, Cumberland County, which upheld the sentence, and then to the Superior Court of New Jersey, Appellate Division. The Appellate Division held that the plain language of the statute makes it clear that the Legislature intended to guarantee a minimum fine of \$200 and a 180-day waiting period for a license to be issued to persons that have never been licensed. However, whether a fine and jail can be imposed or whether the court must choose one is "susceptible to two possible interpretations" both of which were characterized as "plainly reasonable."

Ultimately, the Court found that defendant's interpretation of the statute was more in keeping with the Legislature's intent – i.e., never-licensed drivers may be fined or imprisoned, but not both. The Court explained that "when the Legislature intends fine or imprisonment, or both, for a motor vehicle offense, it often says so plainly." The Commission drafted a proposed revision to the statutory language in keeping with the decision of the Court and anticipates the presentation of a Draft Tentative Report to the Commission in early 2015.

Uniform Act on Prevention of and Remedies for Human Trafficking

In February 2014, the Commission released a Draft Final Report reviewing the potential applicability of the Uniform Act on Prevention of and Remedies for Human Trafficking. The Draft Final Report recognized the significant and serious nature of the crime of human trafficking and lauded the New Jersey Legislature's substantial efforts to draft, implement and enforce stringent anti-trafficking laws. In light of New Jersey's strong commitment to enforcing its recently enhanced human trafficking laws that are similar to the Uniform Act, the Draft Final Report recommended suspending the project until the new laws had ample time to be more fully utilized.

As a result of the NJLRC's expanded outreach to legal scholars, the Rutgers School of Law – Newark's International Human Rights Clinic submitted a Memorandum identifying some potential ways in which New Jersey's existing human trafficking laws could be strengthened. The Human Rights Clinic suggested: (1) the amendment of New Jersey law immunizing human trafficking victims, particularly minors, from prosecution for prostitution-related offenses, (2) revision of New Jersey law to establish business entity liability for human trafficking crimes, (3) expansion of the New Jersey Human Trafficking Commission's duties to include oversight of a broader anti-trafficking public awareness campaign, and (4) clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws.

In October 2014, the Commission reviewed and considered these proposals and instructed Staff to conduct additional outreach to interested stakeholders. Staff anticipates the preparation of a Revised Tentative Report in early 2015.

Uniform Asset-Preservation Orders Act

A memorandum was presented in October 2014 to update the Commission regarding the Uniform

Asset-Freezing Orders Act (UAFOA), which was amended by the Uniform Law Commission (ULC) and renamed the Uniform Asset-Preservation Orders Act (UAPOA) in May 2014. The primary substantive change replaces the term “freezing” with the term “preservation” in the title and throughout the body of the Act. Other changes incorporate 2013 revisions to the Prefatory Notes which outline the historical context that lead the ULC to identify a need for uniformity in this area of the law. The amended Act also incorporated revisions to the Official Comments, emphasizing the protections offered to a party served with an asset-preservation order. The UAPOA has not been enacted in any jurisdiction, but was introduced in the District of Columbia, North Dakota and Colorado in 2014.

The UAPOA provides for *in personam* orders which impose a preliminary injunction on the asset owner and collateral restraints upon non-parties, such as the defendant’s banking institution, to preserve assets from dissipation by the defendant. The UAPOA is designed to respond to the technological advances that allow a defendant to dispose of assets that would satisfy a judgment with the click of a mouse or the push of a button. The UAPOA also address the circumstances where the assets are in a foreign jurisdiction and beyond the reach of an *in rem* order for their preservation.

The UAPOA is procedural in nature and applies only when the underlying action involves monetary damages. It does not generally apply to consumer debt, family law, or estate matters. The asset-preservation order may be sought at the time the underlying action is filed and it remains available while the action is pending. Commission Staff has conducted research and outreach in order to prepare a proposal concerning the UAPOA for the Commission to consider in the first quarter of 2015.

Uniform Protection of Genetic Information in Employment Act

In July 2014, the Commission released a Tentative Report regarding the Uniform Protection of Genetic Information in Employment Act (UPGIEA), which the Uniform Law Commission approved and recommended for enactment in all the States. As an alternative to adopting UPGIEA in its entirety, the Commission is considering a recommendation to incorporate into New Jersey’s Genetic Privacy Act (GPA), those provisions of UPGIEA not yet addressed in New Jersey law.

Advancements in science and technology have made it possible to obtain information from the DNA molecule about an individual’s probable medical future. One challenge emphasized by the scientists involved in decoding the human genome is the potential misuse of genetic information, which the new technologies will make available. In the employment context, the potential use of genetic information to make hiring, firing, and other personnel decisions raises the most concern.

By 2014, 37 states, including New Jersey, had enacted statutes regulating how employers collect, use, retain, or disclose employees’ genetic information. Enacted in 1996, New Jersey’s GPA is one of the most comprehensive laws protecting genetic information to be passed in any state. In 2008, Congress passed the Genetic Information Nondiscrimination Act (GINA) in response to the explosion of advancements in the science of genetics and in recognition of the potential for discrimination based on genetic information. The UPGIEA, not yet adopted in any state, attempts to comprehensively regulate “acquisition, use, retention, and disclosure of genetic information in the context of

“Being a member of the New Jersey Law Revision Commission has been an intellectually challenging and thought-provoking experience. In addition, the work we do has a positive impact on the residents of New Jersey.”

*Anthony R. Suarez, Esq.,
Werner, Suarez & Moran, LLC
(2014)*

employment” and “allows individuals to control the privacy of their genetic information, preventing the misuse of that information.”

While the Commission is mindful of the ULC’s concerns regarding uniformity, New Jersey’s GPA has been in place since 1996 and is a well-integrated work of legislation that already offers many of UPGIEA’s protections. In its July 2014 Tentative Report, the Commission identified several areas where existing New Jersey law can be revised in order to bring it more in line with UPGIEA.

8. – No Action Recommended



8. – No Action Recommended

Insurance Coverage – Special Automobile Insurance Policy

The Commission considered, in January 2014, a request to modify N.J.S. 39:6A-3.3, the “Establishment of special automobile insurance policy” which was enacted in 2003 “to assist certain low income individuals in this State and encourage their greater compliance in satisfying the mandatory private passenger automobile insurance requirements.” The special insurance plan is “offered only to individuals who qualify for and are actively covered by designated government subsidized programs in the State” and the Commissioner of Banking and Insurance was instructed to “limit availability to those persons eligible and enrolled in the federal Medicaid program.” N.J.S. 39:6A-3.3.

Staff’s preliminary review of the statutory provision in issue suggested that it was the result of a deliberate action and a policy determination by a Legislature faced with the challenge of balancing legitimate and competing goals. Over the last decade, this determination has not been altered by the Legislature or called into question by the courts. Since policy determinations of this sort are the province of the Legislature, and not the Commission, and since the matter was brought to the attention of members of the Legislature at the same time that a request was made of the Commission to consider the issue, it did not appear that there was a role for the Commission to play and no project was undertaken.

Long-Term Capacity Pilot Project Act

In July 2014, the Commission was presented with a memorandum concerning the Long-Term Capacity Pilot Project Act (LCAPP), N.J.S. 48:3-98.3, and a federal district Court decision, *PPL EnergyPlus v. Hanna*, 977 F.Supp.2d 372 (D.N.J. 2013) in which the Court determined that the LCAPP was unconstitutional. This Act was meant to attract new generators to build in-state, but it modified federally-approved terms of the reliability pricing model. These modifications were found by the Court to have intruded on the province of the federal government in a manner deemed unconstitutional.

The Commission considered potential action in this area, including recommending the repeal of the statutory provisions deemed unconstitutional, or engaging in outreach in an effort to identify a method by which the unconstitutional provisions could be replaced with the alternatives identified by the Court in its opinion, or other options. Since the case was pending on appeal at the time the Commission first considered it, and the alternative suggestions included by the Court in the opinion seemed likely to involve policy judgments that the Commission would not readily have a basis to recommend, the Commission determined that this issue did not represent a project at this time.

Multiple Extended-Term Sentences

New Jersey sentencing laws authorize longer prison terms for some offenses under certain conditions. The Commission initiated this project in September 2012 to clarify the language of N.J.S. 2C:44-5, which places restrictions on the imposition of multiple extended-term sentences, in accordance with the decision in *State v. Hudson*, 209 N.J. 513 (2012).

In *Hudson*, 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. Although the majority based its holding on the statute’s plain language, the

dissent 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."

Recognizing the *Hudson* decision as settled law but also acknowledging the interpretive issues raised in dissent, the Commission released a Tentative Report in May 2013, soliciting comments from various criminal law practitioners. When the only substantive comments received strongly opposed revision, the Commission concluded work on the project.

New Jersey Soldiers and Sailors Civil Relief Act

In February 2014, the Commission concluded its work on this project in light of legislative action to create a New Jersey Servicemembers' Civil Relief Act. Senator Christopher Connors and Senator James Beach sponsored Senate Bill 210 which repeals the New Jersey Soldiers' and Sailors' Civil Relief Act, N.J.S. 38:23C-1 et seq., and establishes a New Jersey Servicemembers' Civil Relief Act. The purpose of the bill is to "update and modernize the benefits and protections afforded to military servicemembers and their dependents and to bring such benefits and protections in line with those provided for by federal law."

Newspersons' Shield Law

In March 2014, the Commission considered whether to propose modifications to New Jersey's Newspersons' Shield Law, codified at N.J.S. 2A:84A-21, to address concerns raised by the court in *In re January 11, 2013 Subpoena by Grand Jury of Union County*, 432 N.J. Super. 570 (2013). In that case, the court indicated that the Legislature has the ability, should they wish, to more clearly define the newspersons' privilege in the face of an ever-evolving news media. In particular, issues have begun to arise regarding not *what* the law protects, but rather *whom* the Legislature intended to cover with an absolute privilege. With the expansive and pervasive nature of the Internet, increasing numbers of "citizen activists" are engaging in reporting functions through blogs, chat rooms, social media, etc. Accordingly, the Commission sought to determine whether New Jersey's current law adequately addresses new media forms.

Ultimately, the Commission decided that New Jersey's existing law provides sufficient flexibility in this area and further action is not required at this time. The Commission requested that Staff continue to monitor this area of the law for further developments.

"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
(2013)*

Sewerage Authorities Law and Municipal Utility Authorities Law

The Commission considered a Memorandum in September 2014, concerning the Sewerage Authorities Law, N.J.S. 40:14A-8, and the Municipal Utility Authorities Law, N.J.S. 40:14B-22, as a result of the New Jersey Supreme Court's decision in *612 Associates, LLC v. North Bergen Municipal Utilities Authority*, 215 N.J. 3 (2013). In that case, the Court was asked to determine which utilities authority was entitled to collect

connection fees from a property served by two different authorities. The Court held that the legislative intent indicates that anyone servicing a given source may charge the connection fee.

The Commission determined that the issue raised by the case did not constitute a project since it is not within the scope of the Commission's authorization to determine how payments should be allocated and, at least at this time, a case-by-case determination might be more appropriate than a general rule as a result of the varied circumstances in which the statute might be looked to for guidance.

Skateboard Park Act

The Commission considered authorizing work on a project to conduct research and determine whether a need exists for a Skate Park Act in New Jersey.

Although Title 5 of the New Jersey statutes, Amusements, Public Exhibitions and Meetings, includes recreational activity-related legislation such as the Ski and Roller Skating Rink acts, it appears that existing New Jersey law adequately covers this area at the present time. The Commission will continue to monitor for developments tending to generate a need to revisit this potential project.

Towing

In March 2014, the Commission considered a request by a member of the public to consider work on a statutory scheme which would provide compensation for towing companies that clear and recover vehicles following a highway accident or emergency. The Commission determined that, because the proposed legislation would require the State to incur costs, it should more appropriately be first considered by the Legislature.

Truth-in-Consumer Contract, Warranty and Notice Act

The Commission, in October 2014, was presented with a memorandum concerning the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), N.J.S. 56:12-14 et seq. The issue was brought to Staff's attention by the U.S. Court of Appeals for the Third Circuit's submission of legal questions for certification to the New Jersey Supreme Court, *Shelton v. Restaurant.com, Inc.*, 214 N.J. 419 (2013).

The questions primarily at issue were: (1) whether the coupons constituted property under TCCWNA; (2) assuming the coupons were property, were they "primarily, for personal, family or household purposes;" and (3) was the sale of coupons by the website a written consumer contract within the meaning of the statute. The New Jersey Supreme Court concluded that TCCWNA encompasses both tangible and intangible property; the coupons qualify as "property...which is primarily for personal, family or household purposes"; and the coupons issued by Restaurant.com were written consumer contracts within the meaning of the Act upon reading the Plain Language Act's provisions *in pari materia* with TCCWNA, as well as applying the Uniform Electronic Transactions Act.

Based on its initial review and preliminary input from commenters knowledgeable about the area, the Commission declined to take up a project in this area of the law.

Workers' Compensation Act

In September 2014, the Commission considered a Memorandum regarding the Workers' Compensation Act based on the decision in *Burdette v. Harrah's Atlantic City*, 2014 WL 184412 (App. Div. 2014). In that case, Plaintiff Burdette was leaving work after she finished her shift when she was struck by another driver. Her car was still partially over Harrah's driveway's apron. The primary issue on appeal in *Burdette* was whether the Division of Workers' Compensation judge properly applied the premises rule.

Courts have established that the two pivotal questions under the premises rule are: (1) where was the site of the accident? and (2) did the employer have control of the property on which the accident occurred? According to case law, the "employer control test" is satisfied if the employer has the right of control, but it is not necessary to establish that the employer actually exercised that right. Courts have also suggested that the definition of "control" should be dictated by the common-sense notion that the term implies simply use by the employer in the conduct of his business; control exists when the employer owns, maintains, or has exclusive use of the property; and an employee is compensable if it was forced to endure an added hazard by the employer and the employer gained a business benefit.

Since Senator Scutari proposed a bill in the current legislative session that impacts this area of the law, and preliminary comment suggested that attempting to define "control" at this juncture might not accomplish the goal of improving the clarity of the statute, the Commission declined to pursue a project in this area.
