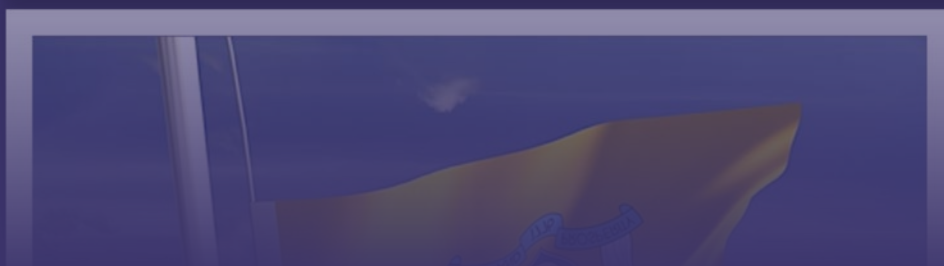


ANNUAL REPORT - 2015

# New Jersey Law Revision Commission





# TWENTY-NINTH ANNUAL REPORT

2015





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

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

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

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## The New Jersey Law Revision Commission

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**Vision:**

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

**Mission:**

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



## Statement of the Chairman

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As the Chairman of the New Jersey Law Revision Commission, I am pleased to present the 2015 Annual Report of the New Jersey Law Revision Commission for the Legislature's consideration, marking the conclusion of another productive year for the Commission.

The Commission was saddened by the untimely passing of Professor Ahmed Bulbulia in early 2015 and we appreciated the willingness of Professor Edward A. Hartnett to serve as the successor representative of the Dean of the Seton Hall University School of Law. Ed immediately demonstrated himself to be a valuable member of the Commission and I extend my thanks to him, and to all of our Commissioners, for the dedication, experience, and care 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 2015 with bipartisan support, and were sent to the Governor at the end of the Legislative session. Of those three, Mortgage Recording and the New Jersey Uniform Trust Code ultimately became law. The publication of scholarly articles by Commission Staff members and the citation of Commission Reports by academic writers and judges represent an additional practical application of the research and analysis of the NJLRC.

Consistent with its statutory mandate, the Commission has also increased its interactions with the Rutgers School of Law, the Seton Hall University School of Law, and the New Jersey Institute of Technology (specifically, its Law, Technology and Culture program). This outreach provides students with an opportunity to participate in the Commission's work as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit. Students participating in these programs indicated that they found the experience valuable, and the work, energy, and enthusiasm of the students certainly has proven beneficial to the Commission as well.

On behalf of the Commission, I thank 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. Our thanks, also, to the many commenters from government entities, the legal profession, the academic community, the private sector, and various members of the public, whose generous contributions of time, experience and expertise were of considerable assistance to the Commission in 2015. It remains our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

With a number of projects underway, we look forward to continuing work on several significant areas of law revision in 2016 and to the opportunity to engage with individuals throughout the State who share our goal of improving the laws which govern all of us.

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

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## In Memoriam

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### **Ahmed Bulbulia, 1943 - 2015**

The New Jersey Law Revision Commission was saddened by the loss of Professor Ahmed Bulbulia in January 2015.

Professor Bulbulia served as representative of the Dean of Seton Hall Law School on the New Jersey Law Revision Commission in the early years of the Commission's work (1990 – 1997), and again from 2009 until his untimely passing.

Professor Bulbulia received his LL.B. from the London School of Economics and LL.M. from the University of Michigan. Known for the breadth of his knowledge in the areas of criminal law, business associations, security regulation, and public international law, Professor Bulbulia brought a unique perspective to his work with the Commission. His intellect, his generosity, and his graciousness will be long remembered.

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## 1. – Overview of the Work of the NJLRC in 2015

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## **1. – Overview of the Work of the NJLRC in 2015**

### **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 2015, the New Jersey Law Revision Commission worked on 33 individual projects. Work on nine of those projects was completed in 2015, and Final Reports and Recommendations were submitted to the Legislature for consideration. The Commission also released seven Tentative Reports, 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 14 projects that have not yet reached the Tentative Report stage and, during the course of the year, the NJLRC examined three 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 recent years, 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's outreach in 2015 included increased interactions with the New Jersey law school communities, bar associations, lawyers, law firms, and other interested individuals and groups within the State. Expanding its outreach 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.

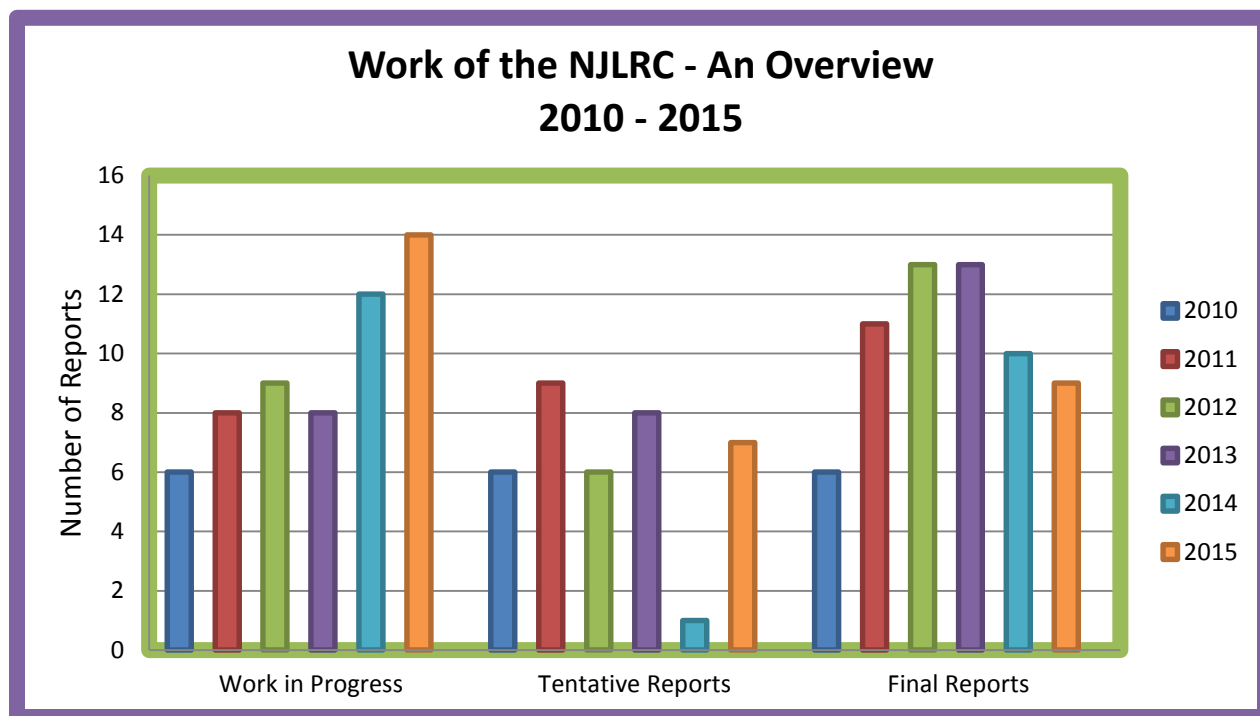
Another outgrowth of the Commission's outreach was the expansion of its interaction with students from New Jersey's three law schools and other educational institutions. In addition to its program of annually

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hiring legislative law clerks, the NJLRC now provides opportunities for student credit-earning externship placements, internships, and student pro bono hours. During the Spring semester of 2015, research and drafting assistance was provided to the NJLRC by pre-law student extern Ikechukwu Onukogu 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 Joshua Bauers, Laura D'Allesandro, Chelsea Nixon, Jessica O'Connor, Misty Ralston, and Leonard Shoponhove 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 Kerpiewski and Lindsey Farina in cooperation with Lori Borgen, Esq., Associate Director of the Center for Social Justice, at Seton Hall University School of Law. Staff members have also participated in various programs presented by the law schools and by NJIT.

In addition, Staff submitted two manuscripts for publication to the Seton Hall Legislative Journal. The first, *Assuming the Risk After Hubner: New Jersey Supreme Court Opinion Spurs Revision of the Equestrian Activities Liability Act*, Volume 39, Number 1, was published in January 2015. The second, *Ante-Mortem Probate in New Jersey – An Idea Resurrected?*, Volume 39, Number 2, was published in July 2015.

While increasing its interactions with individuals and groups throughout the State who might have recommendations for changes to the law, the NJLRC also continued its efforts to make its process more transparent and accessible through its website (found at [www.njlrc.org](http://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 session 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 and welcomes suggestions from interested parties regarding how it might do so.



**Reports Enacted During the 2014 – 2015 Legislative Session:**

In 2015, the bills pertaining to Mortgage Recording that were based on the work of the Commission (A3837 /S1346) were passed by both houses of the Legislature in December, and sent to the Governor. The Governor conditionally vetoed the bills in January 2016 and, in response, the Senate passed an emergency resolution adopting the Governor's recommendations and it was passed by both houses of the Legislature and again sent to the Governor. At the end of the Legislative session, the Governor signed the bills into law as L.2015, c.225. The bills recommended changes to the law regarding the duty to prepare a document showing that a mortgage has been satisfied, and clarified that the record mortgagee must sign the satisfaction of mortgage, in order to make the chain of title clear. Pursuant to the bills, the land title records will show who held the mortgage and that that party has declared it satisfied (if the record holder has no continuing relationship to the mortgage or its owners, it may file an assignment to the proper party).

Also in 2015, the bills pertaining to the Uniform Trust Code (A2915/S2035) that were based on the work of the Commission were passed by both houses of the Legislature and sent to the Governor in January 2016. At the end of the Legislative session, the Governor signed the bills into law as L.2015, c.276. The bills recommended enactment of the New Jersey Uniform Trust Code, which is based on the Uniform Trust Code as well as the work of an ad hoc Committee of New Jersey experts who analyzed it and adapted it for New Jersey's needs. The New Jersey Uniform Trust Code would create a comprehensive set of statutory provisions in an area of the law now largely governed by case law.

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.

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.

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.

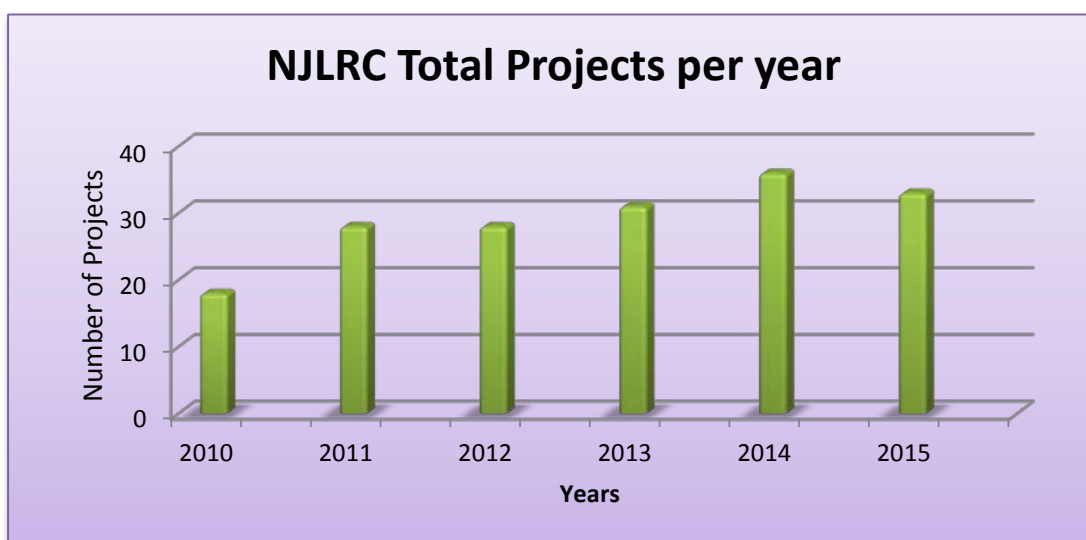
In addition to the enacted projects mentioned above, the Commission's Final Report pertaining to the Uniform Interstate Depositions and Discovery Act was forwarded to and considered by the New Jersey Supreme Court's Civil Practice Committee since the modifications proposed by the Final Report were more appropriate for implementation by Court Rule than by statute. The Commission's recommendation formed the

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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.

### **Reports That Moved Through Both Houses of the Legislature in 2015**

In 2015, the bills pertaining to Adverse Possession that were based on the work of the Commission (A1682/S1364) were passed by both houses of the Legislature and sent to the Governor in January 2016. The bills were pocket vetoed by the Governor at the end of the Legislative session. The bills clarified the law concerning adverse possession and promote stability of land titles in light of the New Jersey Supreme Court's 2001 decision in *J & M Land Co. v. First Union Bank*. They also addressed the problem of the use of adverse possession against governmental entities (generally following the common law rule exempting State property from the effect of adverse possession but making an exception for riparian lands when those lands are owned by persons who meet the requirements for adverse possession for forty years, have record title to their property, and have paid taxes on that property to establish good title to the property).



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

In addition to the NJLRC projects enacted during the in 2014-2015 Legislative Session, the following NJLRC projects were the subject of bills introduced in 2014 and 2015, 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
- Overseas Residents Absentee Voting Law
- Pejorative Terms Regarding Persons With Physical or Sensory Disabilities
- Standard Form Contracts
- Uniform Interstate Family Support Act

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 Daniel Benson  
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  
Assemblyman Thomas Giblin  
Assemblywoman Mila Jasey  
Assemblyman Gordon Johnson  
Assemblywoman Valerie Vainieri Huttle  
Assemblyman Sean Kean  
Assemblyman Joseph Lagana  
Assemblywoman Pamela Lampitt  
Assemblywoman Gabriela Mosquera  
Assemblyman Vincent Mazzeo  
Assemblyman John McKeon  
Assemblywoman Nancy Munoz  
Assemblyman Declan O'Scanlon  
Assemblyman Erik Peterson  
Assemblywoman Annette Quijano  
Assemblyman David Rible  
Assemblyman Gary Schaer  
Assemblywoman Holly Schepisi  
Assemblywoman Cleopatra Tucker  
Assemblyman Jay Webber  
Assemblyman Benjie Wimberly  
Assemblyman John Wisniewski  
Senator Diane Allen  
Senator Peter Barnes  
Senator Christopher Bateman  
Senator James Beach  
Senator Jeff Van Drew  
Senator Steven Oroho  
Senator Ronald Rice  
Senator Nicholas Scutari  
Senator Robert Singer  
Senator Brian Stack  
Senator Loretta Weinberg  
Senator Jim Whelan

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**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 2015. 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:

Administrative Office of the Courts, New Jersey

The American Law Institute

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

Kathleen M. Boozang, Dean, Seton Hall Law School

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

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

Burlington County Prosecutor's Office

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Judith Cole, Executive Office Coordinator, The American Law Institute

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Linda Czipo, Executive Director, Center for Non-Profits

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

Sgt. Ken Drost, Vice President, New Jersey Patrol Traffic Officer Association

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

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Professor David Frankford, Faculty Director, Rutgers Center for State Health Policy

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

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

Casey Gillece, Legislative Counsel, Uniform Law Commission

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Stacey Gould, Esq.

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Patrick Hobbs, Director of Athletics, Rutgers University

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International Association of Collaborative Professionals

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

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

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

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Kate Keisel-Caballero, Co-founder and CEO, Sanar Institute

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

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

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

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James A. Louis, Office of Law Guardian

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

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

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

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)

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Jim Moseley, President, Limousine Association of New Jersey

Officer Dan Murray, Roxbury Police Department

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Gabriel R. Neville, Senior Legislative Counsel, Office of Legislative Services

New Jersey Governor's Highway Traffic Safety Policy Advisory Council

New Jersey Motor Vehicle Commission

New Jersey Police Traffic Officers Association

New Jersey State Bar Association

New Jersey State Library

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

Daniel Phillips, Legislative Liaison, Administrative Office of the Courts

Patricia Quinn, concerned citizen

Jeyanthi Rajaraman, Legal Services of New Jersey

Joseph Ribsam, Deputy Commissioner, Department of Children and Families

Patricia Risch, Assistant Director, New Jersey Office of Child Support Services

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

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

Rutgers School of Law – Newark, International Human Rights Clinic

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

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

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Detective Sergeant Joe Williams, Berkeley Heights Police Department

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

Henry Wolfe, Esq., Wolfe Law Firm

Donna Younkin, Director, Special Initiatives, Office of the Commissioner, New Jersey Department of Children and Families

John Zimmerman, Chief of Police, Kenilworth Police Department



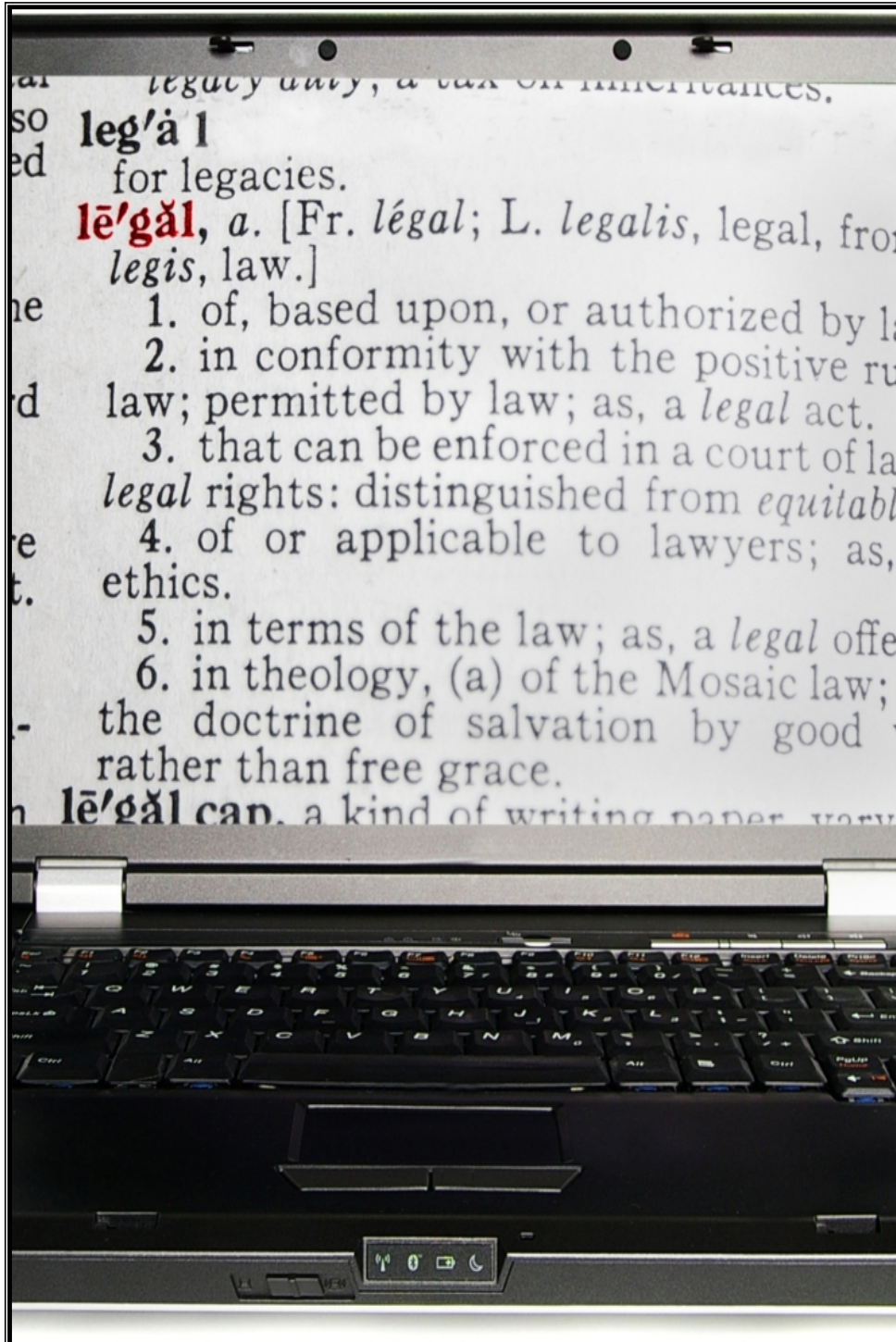
**Clarify**

**Simplify**

**Remedy**

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



## **2. – Enacted Reports and NJLRC Case and Other References**

Since the NJLRC began work in 1987, the New Jersey Legislature has enacted 48 bills based upon 59 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:

### **2015**

- *New Jersey Uniform Trust Code* (L.2015, c.276) – The Report proposed the creation of a comprehensive set of statutory provisions in an area of the law now largely governed by case law.
- *Recording of Mortgages* (L.2015, c.225) – The Report recommended changes to the law regarding the duty to prepare a document showing that a mortgage has been satisfied, and clarify that the record mortgagee must sign the satisfaction of mortgage, in order to make the chain of title clear. The Report also proposed language to address fraud by persons claiming to be servicers of a mortgage.

### **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.
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- *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.
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- *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:

- *Gately v. Hamilton Memorial Home, Inc.*, 2015 WL 6181084 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *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)
- *Gebro-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)
- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (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:

- Susan G. Thatch, *Ante-Mortem Probate in New Jersey – An Idea Resurrected?*, 39 SETON HALL LEGIS. J. 332 (2015)
  - Vito J. Petitti, *Assuming the Risk After Hubner: New Jersey Supreme Court Opinion Spurs Revision of the Equestrian Activities Liability Act*, 39 SETON HALL LEGIS. J. 59 (2015)
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- 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)
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### 3. – History and Purpose of the Commission

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

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

In 1985, the Legislature enacted 1:12A-1 et seq., effective January 21, 1986, to transfer the functions of statutory revision and codification to a newly created NJLRC in order to provide for a “continuous review of the statutory law of the State.” N.J.S. 1:12A-1, Introductory Statement. The Commission began work in 1987 and has, since that time, filed 148 Reports with the Legislature and one with the New Jersey Supreme Court. Fifty-two 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.

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#### 4. – Members and Staff of the NJLRC in 2015

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#### 4. – *Members and Staff of the NJLRC in 2015*

##### **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 is certified by the New Jersey Supreme Court as a Certified Civil Trial Attorney and 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 1989 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.

##### **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.

**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.

**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. Kearse 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.

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**Patrick Hobbs**, Dean (Retired), Seton Hall University School of Law, Ex officio (*Served until July 2015*)

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** (*Served until January 2015*)

Professor Bulbulia received his LL.B. from the London School of Economics and LL.M. from the University of Michigan. He was a barrister at law of the Middle Temple and an advocate before the Supreme Court of South Africa. Professor Bulbulia published in the areas of corporations and professional responsibility and 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 taught include Public International Law, International Criminal Law, Conflict of Laws, and Contracts.

**Kathleen M. Boozang**, Dean, Seton Hall University School of Law, Ex officio (*Commenced Serving July 2015*)

Kathleen Boozang joined the Seton Hall Law faculty in 1990 as the founder of the Law School's now top-ranked Center for Health & Pharmaceutical Law & Policy. Prior to becoming Dean, she also established the Law School's graduate degrees, Division of Online Learning and global life sciences compliance training programs. She has been Dean of Seton Hall Law since July 2015 and, before that, she served in multiple administrative capacities, including Associate Dean for Academic Affairs for eight years and Vice Provost for two years.

Represented by **Professor Edward A. Hartnett** (*Commenced Serving in May 2015*)

Professor Hartnett received his A.B., magna cum laude, from Harvard and his J.D. from New York University, where he was elected to the Order of the Coif and received the highest award given to J.D. candidates. He clerked for Judge Frederick B. Lacey and Judge Robert E. Cowen of the United States District Court for the District of New Jersey, and for Chief Judge John J. Gibbons of the United States Court of Appeals for the Third Circuit. After his clerkships, he practiced with the Federal Public Defender and the law firm of Robinson, St. John & Wayne. He has published articles in the areas of federal jurisdiction and constitutional law. The courses that he teaches include Constitutional Law, Civil Procedure, Criminal Procedure, and Evidence.

**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

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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. In addition to serving with the Commission, he volunteers his time with indigent clients at 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 holds a Bachelor of Science degree in Criminal Justice.

#### **Susan G. Thatch, Counsel**

Susan Thatch joined the Commission as a staff attorney in May 2014. She has been a licensed attorney since 1997 and is admitted to practice in New Jersey and New York. Prior to joining the Commission, Susan practiced at McCarter & English, and Milbank, Tweed, Hadley & McCloy LLP, 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 Rutgers 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.

**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 2015 are:

**Dominic J DiLeo**, Seton Hall University School of Law, Law Student Extern – Summer 2015

**Nicole L. Grasso**, SUNY Buffalo Law School, Legislative Law Clerk – Summer 2015

**Amy Huber**, Rutgers Law School – Camden, Law Student Extern – Fall 2015

**Mark J. Leszczyszak**, Seton Hall University School of Law, Legislative Law Clerk – 2014-2015

**Patrick McGinnis**, Rutgers Law School – Newark, Legislative Law Clerk – Summer 2015

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## 5. – Final Reports and Recommendations

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## 5. – *Final Reports and Recommendations*

### Civil Unions

In March 2015, the Commission released a Final Report relating to Civil Unions in New Jersey. The Commission's work in this area resulted from the March 2014 ruling by a New Jersey Superior Court judge in *Groh v. Groh*, 439 N.J. Super. 186 (2014), that civil unions may be dissolved on the no-fault ground of irreconcilable differences. The ruling is significant because, although irreconcilable differences is listed among the grounds for dissolution of marriages, it is not explicitly available as a basis for the dissolution of civil unions under current New Jersey law, N.J.S. 2A:34-2, -2.1.

New Jersey's civil union statute, effective in 2007, specifies that "[t]he dissolution of civil unions shall follow the same procedures and be subject to the same substantive rights and obligations that are involved in the dissolution of marriage." Indeed, in practice, New Jersey courts and practitioners rely on no-fault irreconcilable differences grounds for civil union dissolutions.

In order to gauge the potential impact of a modest, limited scope revision to existing statute, the Commission conducted preliminary outreach to representatives of the Administrative Office of the Courts and the Family Law section of the New Jersey State Bar Association, receiving unqualifiedly positive comments from each regarding a project to clarify the existing statute. Currently, the respective lists of dissolution grounds are essential but not perfect mirror images of each other, due to the inherent differences between marriage and civil unions.

The Commission recommended a revision of New Jersey civil union dissolution grounds so as to reflect the current practice in New Jersey.

### **Definition of "Victim of Domestic Violence" - N.J.S. 2C:25-19d (Prevention of Domestic Violence Act)**

The Commission released a Final Report in December 2015 that concludes this project, which sought to clarify the definition of "victim of domestic violence" under N.J.S. 2C:25-19d. The Final Report recommends that no action be taken at this time, due to the enactment of the Sexual Assault Survivor Protection Act of 2015 (SASPA), which addressed the issues expected to be covered by the Commission's project.

In April 2014, the Commission authorized a project to clarify the definition of a "victim of domestic violence," as provided in N.J.S. 2C:25-19d. The project considered revising the definition to reflect the broad interpretation of recent judicial decisions concerning the relationship that must exist between the victim and the offender to satisfy the threshold definition of "victim of domestic violence" under the New Jersey Prevention of Domestic Violence Act (PDVA). During the course of the project, highly publicized incidents of domestic violence and sexual assault were covered by local and national media, prompting increased scrutiny of the existing New Jersey statutes in this area of the law. Subsequently, several state legislators proposed measures to ensure the safety and well-being of individuals who are threatened with or experience sexual violence.

The prompt action of the New Jersey Legislature led to the passage of the Sexual Assault Survivor Protection Act of 2015 (SASPA), which was signed into law by the Governor on November 9, 2015. The SASPA

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authorizes emergency, ex parte protective orders to safeguard individuals who are victims of nonconsensual sexual contact, sexual assault or lewdness, but are not covered under the PDVA.

The Final Report concludes that at this time, in light of the enactment of the SASPA, no recommendations will be provided by the Commission in this area of the law.

### **Driver's License Penalties – Title 39**

In December 2015, the Commission released a Final Report relating to Driver's License Penalties. The project was commenced in response to the New Jersey Superior Court's holding in *State v. Carreon*, 437 N.J. Super. 81 (App. Div. 2014), in which the Court was asked to interpret the penalty provision of N.J.S. 39:3-10, the statute governing driver's licenses. Upon the defendant's third conviction for driving without a license, the municipal court in *Carreon* imposed both a fine and jail term, which the Appellate Division reversed based on its examination of the Legislature's intent.

The Commission's proposed revisions, which were well received by the law enforcement community as likely to help prevent misinterpretation, were intended to enhance the clarity of N.J.S. 39:3-10, consistent with the judicial determination in *Carreon*, by addressing the structure of the statute but not its substance.

*"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)*

Consistent with the practice of the NJLRC, the release of this Final Report will be followed by outreach to identify state lawmakers who may be interested in sponsoring legislation in this area.

### **Retroactive Child Support Orders**

In November 2015, the Commission released a Final Report relating to Retroactive Child Support Orders, which proposed revisions to New Jersey statute intended to clearly distinguish child support obligors who have not violated a court order from those in an arrears status based on nonpayment.

New Jersey employs a number of enforcement mechanisms to ensure that children receive appropriate support, including credit reporting, which may negatively affect the credit ratings of obligor parents and their ability to borrow. But a problem arises when a judge issues a retroactive child support order which creates a technical arrearage "against a non-custodial parent who has never violated a support order or missed any legally specified payments." The plain language of New Jersey's child support statute, N.J.S. 2A:17-56.21, mandates that information regarding even technical arrearages be provided to credit reporting agencies.

The goal of the Commission's work in this area was to conduct research and propose revisions to N.J.S. 2A:17-56.21 to reflect the court's determination in the recently published case of *Cameron v. Cameron*, 440 N.J. Super. 158 (2014), which barred the reporting of technical arrearages to credit bureaus. The Commission's Report proposed several potential revisions intended to address the issue raised by the decision in *Cameron*.

### **Uniform Foreign-Country Money Judgments Recognition Act**

In July 2005, the Uniform Law Commission (ULC) approved and recommended for enactment in all the States the Uniform Foreign-Country Money Judgments Recognition Act (UF-CMJRA), which provides updated rules and procedures for the recognition of foreign judgments.

The Commission began work in this area and recommended enactment of the UF-CMJRA because it provides a clear and systematic method of seeking recognition of foreign-country money judgments, the revisions improve the existing law in this area, enacted in 1962, and because the significant number of enactments in other states suggest an ongoing trend toward the benefits of uniformity and consistency among the states. The Commission identified potential amendments to the UF-CMJRA's specific provisions, intending to recommend it as a beneficial piece of legislation, but upon the introduction of Assembly Bill No. 4163, entitled the "Foreign Country Money-Judgments Recognition Act of 2015," which would enact the 2005 UF-CMJRA with several substantive changes, the Commission finalized its work in this area.

Although the release of this Final Report marked the completion of the Commission's work on this project, consistent with the practice of the NJLRC, the Commission offers its support to the Legislature for the enactment of Assembly Bill No. 4163, which updates and improves existing New Jersey law in the area of foreign country money judgment recognition, and promotes uniformity and consistency among the states.

### **Uniform Limited Partnership Act 2001**

In December 2015, the New Jersey Law Revision Commission published a Final Report recommending the enactment of the Uniform Limited Partnership Act (ULPA 2001) as promulgated by the Uniform Law Commission with amendments through 2013. The Uniform Limited Partnership Act (ULPA) was first released in 1916. Along with the Uniform Partnership Act, ULPA has been the basic law governing partnerships in the United States. The first revision of ULPA after 1916 occurred in 1976. There were further amendments in 1985; this version of the act became known as Revised Uniform Limited Partnership Act (RULPA). It is the 1976 act that is now part of New Jersey law.

ULPA 2001 was drafted for a world in which limited liability partnerships (LLPs) and limited liability companies (LLCs) can meet many of the needs formerly met by limited partnerships. Therefore, ULPA 2001 targets two types of enterprises that are largely beyond the scope of LLPs and LLCs. First, ULPA 2001 includes provisions to meet the needs of sophisticated, manager-entrenched commercial deals whose participants commit for the long term. Second, ULPA 2001 addresses the modern needs of estate planning arrangements, so-called "family limited partnerships." In addressing these concerns, ULPA 2001 assumes that the people utilizing it will want both strong centralized, entrenched management, and passive investors or limited partners with little capacity to exit the entity. As a result, the act's rules, and particularly its default rules, have been designed to reflect those assumptions.

### **Uniform Premarital and Marital Agreement Act**

The Commission released a Final Report in March 2015 with a recommendation against enactment of the Uniform Premarital and Marital Agreement Act (UPMAA) at this time, in deference to the recent, comprehensive amendments to the New Jersey statute governing premarital agreements and the existing body of state law.

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The Uniform Law Commission (ULC) approved and recommended the UPMAA in July 2012 to update and replace the Uniform Premarital Agreement Act. To date, only Colorado and North Dakota have enacted the UPMAA which, unlike its predecessor, governs both pre-marital and postnuptial agreements to “bring clarity and consistency across a range of agreements between spouses, and those contemplating marriage.” In accord, the UPMAA seeks to fill “a gap in existing uniform marital laws” by including agreements made during marriage by spouses who desire to continue their marriage “but who wish to order the financial terms affecting their marriage.” Cohabitation agreements, property settlement, and separation agreements are outside the scope of the UPMAA.

*“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)*

The UPMAA updates the definition of a premarital agreement and defines a marital agreement as an “an agreement between spouses who intend to remain married which affirms, modifies, or waives a marital right or obligation during the marriage or at separation, marital dissolution, death of one of the spouses, or

the occurrence or nonoccurrence of any other event,” and includes an amended premarital or marital agreement that was signed after the couple marries. The UPMAA seeks to encourage couples to freely determine the terms of marital agreements “with uniform standards of due process and fairness.” The Commission recommended against enactment of the UPMAA at this time.

### **Uniform Protection of Genetic Information in Employment Act**

In July 2015, the Commission released a Final Report regarding the Uniform Protection of Genetic Information in Employment Act (UPGIEA), approved and recommended by the Uniform Law Commission (ULC) for enactment in all the States. As an alternative to adopting UPGIEA in its entirety, the Commission recommended incorporating 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 learn information from the DNA molecule about an individual’s probable medical future. Scientists involved in decoding the human genome have articulated a concern regarding the potential misuse of genetic information, which could be improperly used in the employment context to make hiring, firing, and other personnel decisions.

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 body of legislation that already offers many of UPGIEA’s protections. Nevertheless, the Commission identified some areas where existing New Jersey law can be revised in order to bring it more in line with UPGIEA and the Final Report recommends changes accordingly.

### **Uniform Voidable Transactions Act**

The Commission released a Final Report in March 2015 based on the 2014 amendments to the Uniform Fraudulent Transaction Act recommended by the Uniform Law Commission (ULC). The amendments are presented in the Uniform Voidable Transaction Act (UVTA), which seeks to: (1) re-categorize transfers as “voidable” rather than “fraudulent” to more accurately reflect the nature of these transfers and prevent confusion; (2) provide guidance on conflict of law issues; (3) clarify the burden of proof and create certain presumptions; (4) modify the definition for insolvency of a partnership; and (5) refine several provisions relating to the defenses available to a transferee or obligee.

The Final Report recommends amending N.J.S. 25:2-20, et seq., which codifies the Uniform Fraudulent Transactions Act. The Final Report adopts all of the amendments in the UVTA, with the exception of the provision concerning series organizations. The Commission recommends omitting that provision at this time, since New Jersey law does not yet recognize series organizations or series LLCs.

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## 6. – Tentative Reports

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## **6. – Tentative Reports**

### **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 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.

In December 2014, the Commission released a Tentative Report identifying potential revisions intended to clarify New Jersey law, N.J.S. 18A:17-2, regarding the movement or transfer of tenured clerical, secretarial, and other non-teaching employees. Comment was sought on the proposed changes and a Final Report is expected in early 2016.

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

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

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

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

The third part of this project involves an analysis of the statutory language and the cases that concern the forfeiture of public office. That part of the project will require a determination about whether it is

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appropriate to distinguish between different types of public employees and different types of offenses, and to treat them differently for purposes of forfeiture.

Work on this project is ongoing. The Commission authorized release of a Tentative Report in order to obtain input from potential commenters.

## Expungement

In July 2015, the Commission began work on a project pertaining to New Jersey's process for the expungement of juvenile adjudications, codified at N.J.S. 2C:52-4.1. The Commission's work in this area arose from the New Jersey Supreme Court's decision, *In re D.J.B.*, 216 N.J. 433 (2014), which clarified the manner in which an individual's juvenile dispositions relate to the expungement of his or her adult convictions.

In *In re D.J.B.*, petitioner D.J.B.'s record consisted of three juvenile delinquency adjudications for various offenses, a conviction for the receipt of stolen property in the fourth degree, and conviction of two disorderly person offenses. After pursuing a law-abiding path for the required period of time, D.J.B. sought the expungement of both his juvenile adjudications and his adult convictions. Both the trial and appellate court held that the final paragraph of 2C:52-4.1(a) applied to the entirety of the expungement statute (both the juvenile and adult expungement provisions); this interpretation effectively converts a juvenile adjudication into a "prior or subsequent crime" barring the expungement of an adult conviction pursuant to N.J.S. 2C:52-2.

After analyzing the expungement law's legislative intent and history, as well as relevant rules of statutory construction, the New Jersey Supreme Court rejected the trial and appellate courts' reading of the statute and held that the final paragraph of N.J.S. 2C:52-4.1(a) was intended only to apply to the portion of the statute governing the expungement of juvenile adjudications. Accordingly, the Court held that D.J.B.'s juvenile adjudications did not constitute "prior crimes" which would automatically prevent the expungement of his adult conviction.

*"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)*

The Commission sought to draft revisions that would clarify N.J.S. 2C:52-4.1 to reflect the Court's holding and further simplify the statutory language in a manner beneficial to individuals filing pro se expungement provisions. In October 2015, Staff prepared a Draft Tentative Report incorporating these revisions. The Tentative Report also proposes eliminating subsections b.(4) and b.(5) of N.J.S. 52-4.1 because these subsections do not accurately reflect New Jersey's current expungement process in which individuals petition for the expungement of both juvenile adjudications and adult convictions contemporaneously. Staff will continue to seek feedback on these provisions and anticipates delivering a Final Report in early 2016.

## Franchise Practices Act

The Commission began work in April 2014 on a project involving the New Jersey Franchise Practices Act (FPA) based on the District Court decision in *Navraj Rest. Group, LLC v. Pancharo's Franchise Corp.*, 2013 WL 4430837 (D.N.J. Aug. 15, 2013). The Court, in *Navraj*, held that under the Franchise Practices Act

(FPA) there are unconstitutional restrictions, in the provisions concerning motor vehicles and other franchises, which expand the presumption of invalidity regarding forum-selection.

The Tentative Report proposes revisions to the statutory language identified by the Court, along with proposals to address other concerns raised by the Court regarding provisions that establish the gross sales threshold under the FPA. Commission Staff is conducting outreach and seeking comment from interested stakeholders to prepare draft language in accord with the decision of the Supreme Court, which is expected to be presented to the Commission in early 2016.

### **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, in 2014, 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.

In keeping with the Appellate Division's determination that "bus" should be construed in accordance with its ordinary and well understood meaning, Staff prepared a Tentative Report proposing statutory language which defines "bus" as a vehicle that is both registered as an "omnibus" pursuant to Title 39 and is engaged in the type of scheduled, routed service that is typically provided by a bus. The Tentative Report is being circulated to relevant stakeholders for comment and review.

### **Special Needs Trusts**

The Commission in November 2015 released a Tentative Report that proposes codifying the New Jersey Supreme Court decision in *Saccone v. Bd. of Trustees of the Police and Firemen's Ret. Sys.*, 219 N.J. 369, 388 (2014), where the Court held that a retired firefighter could direct the survivors' benefits for a child with a disability to a first-party special needs trust (SNT). The Court "construe[d] the reference to 'child' " in the statute as the equivalent to "a first-party SNT established" solely for the benefit of a child with a disability. The Court viewed the SNT as an extension of the child.

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The Court held that the request to direct the benefits to the SNT did not involve assignment of the survivors' benefits or a change of the primary beneficiary. Instead, the request involved the "manner in which" the child would receive the survivors' benefits. The Court reasoned that the retired member wanted the fund to be distributed through "a vehicle that prevents the benefit from becoming a financial liability" to the child with a disability. The Court found that the decision to deny the request to direct the funds to the SNT forced the child "to choose between abandoning survivors' benefits earned" by the parent or "forgoing public assistance to provide for medical needs." The Court held that this was an "arbitrary, capricious, and unreasonable" result, "disserving the very individual" the Legislature "intended to help." The Court set aside the determination to prevent funds for the surviving child to be directed to the SNT and ordered administrative action consistent with the majority opinion.

Commission Staff anticipates conducting additional outreach with interested stakeholders to determine the best approach to codify the *Saccone* holding, and presenting a Final Report in early 2016.

### **Uniform Electronic Legal Materials Act**

In July 2011, the Uniform Law Commission (ULC) approved and the Uniform Electronic Legal Materials Act (UELMA) and recommended its enactment in all states. The UELMA has been endorsed by the American Association of Law Libraries and holds significance for the New Jersey Law Librarians Association. At the request of liaisons from the Seton Hall Law School library and the Rutgers School of Law library, the Commission undertook review of the UELMA for possible introduction in New Jersey.

In its summary of the Act, the ULC explains that the availability of government information online facilitates transparency and accountability, provides widespread access to essential information, and encourages civic participation. The ULC designed the UELMA as a framework under which the states should provide and manage electronic government information in a manner that guarantees trustworthiness and continued access.

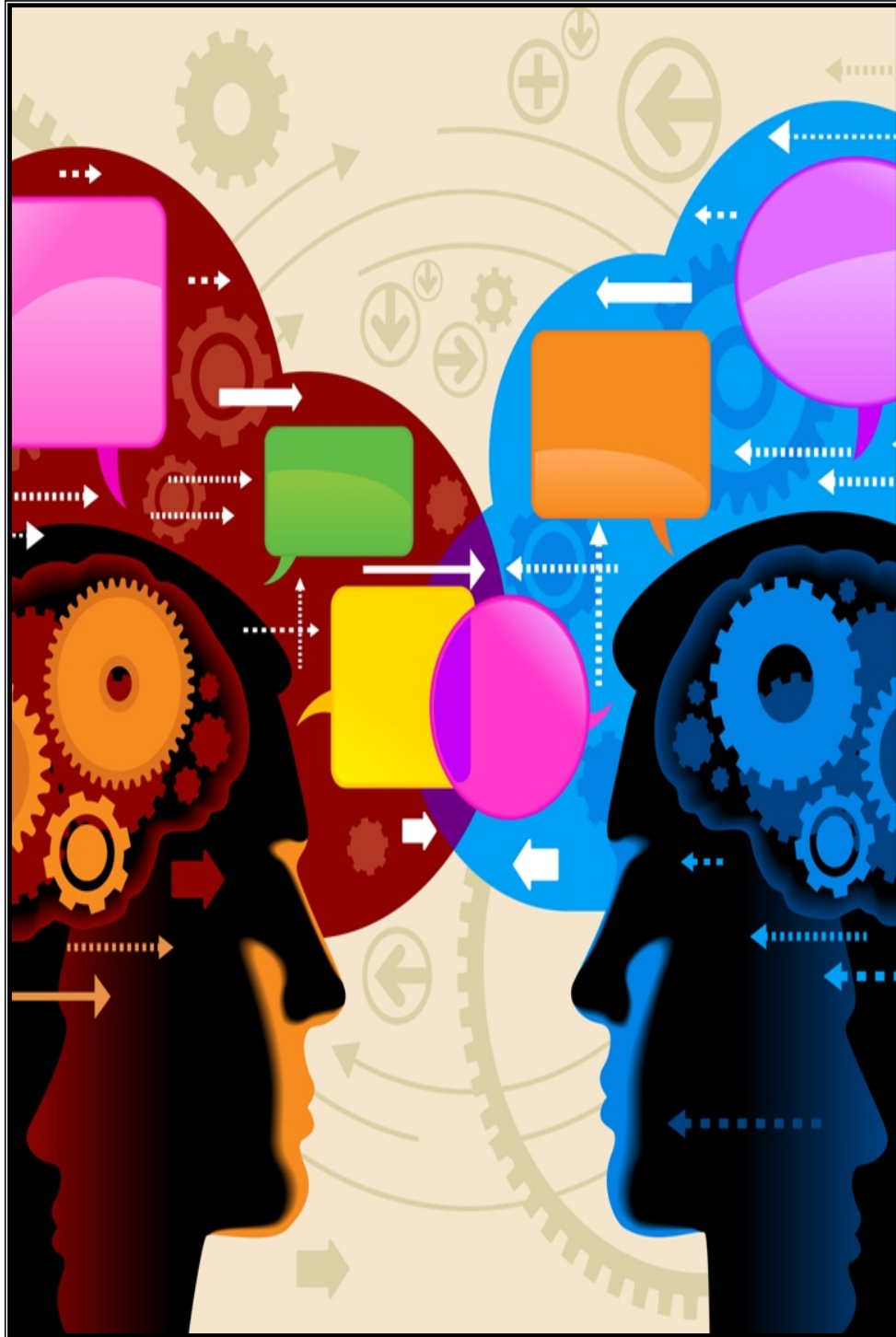
The UELMA is designed to provide for the authentication, preservation, and accessibility of official electronic state legal material and to assist state governments in guaranteeing the free flow of trustworthy legal information. It affords states the discretion to determine which categories of "legal material" will be covered by the Act, but does not affect relationships between an official state publisher and a commercial publisher, copyright laws or the rules of evidence.

Similarly, the choice of technologies for authentication and preservation is left to the individual states, but it is contemplated that the UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. The Act is intended to be complementary to the Uniform Commercial Code (which governs sales and many commercial transactions, the Uniform Real Property Electronic Recording Act (which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (which addresses electronic commerce).

In discussions regarding the UELMA, the Commission has identified areas that may benefit from revisions further promoting the accessibility, reliability and security of New Jersey's legal materials. In June 2015, Staff prepared a Revised Draft Tentative Report incorporating these modifications and is presently working with interested parties to determine whether the revised Act achieves the goals of the ULC and is suitable for New Jersey.

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## 7. – Work in Progress





## 7. – *Work in Progress*

### **Ante-mortem Probate**

In January 2014, the Commission authorized a project based upon the New Jersey Law Journal article entitled “Ante-Mortem Probate: Why Wait Until It’s Too Late,” 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.

The Seton Hall Legislative Law Journal published the Staff-authored article, “Ante-Mortem Probate in New Jersey – An Idea Resurrected?,” 39 SETON H. LEG. J. 332 (2015), detailing the historical and statutory background of ante-mortem probate legislation and evaluating the potential for this type of legislation in New Jersey. Staff anticipates delivering a Tentative Report providing further analysis regarding whether such a statute would be beneficial to New Jersey testators after obtaining feedback from knowledgeable parties.

### **Bulk Sales**

In November 2015, the Commission authorized a project relating to N.J.S. 54:50-38, which requires a purchaser of business assets to notify the Division of Taxation for a determination of a possible claim for State taxes. A real estate practitioner brought this provision to the Staff’s attention, citing concerns that the law creates an unnecessary burden in certain real estate transactions.

N.J.S. 54:50-38 requires the purchaser, transferee or assignee of the bulk or whole part of another individual’s business assets to notify the Division of Taxation of the transaction and its terms at least 10 days prior to the closing of the transaction. Within 10 days of receipt, the Division will advise the purchaser, transferee or assignee as to any possible claim for State taxes, including the amount of the potential liability. If the purchaser, transferee or assignee declines to notify the Division of Taxation, they may be liable for any State taxes owing on the purchased asset(s).

Recognizing that this provision may complicate home sales, the Legislature enacted exceptions to the notification requirements when an “individual,” “estate,” or “trust,” as defined in the New Jersey Gross Income Tax Act, transfers an interest in a simple dwelling house. The definition of “individual” is limited to “a single-person, married or civil union couple, spouse or civil union partner.” Under this exemption, a transaction involving two or more joint sellers who are not married or civilly united, such as parent and child, siblings, or a couple owning property jointly, is not exempt from the N.J.S 54:50-38’s notice requirements.

The notification process could delay mortgage commitments or other time sensitive matters, or even complicate a foreclosure or short sale. While the limited exemptions provide some relief for sole or married

owners, they fail to address property ownership structures of a similar nature; in these instances, the purchaser must either accept an extended closing process or assume any potential post-closing State tax liability.

Staff anticipates delivering a Tentative Report to the Commission providing additional information regarding the historical and practical aspects of N.J.S. 54:50-38 in early 2016.

## 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 fifty 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.

*"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)*

In March 2015, Staff prepared a Memorandum identifying some of the more litigated provisions of New Jersey's CFA: (1) mandatory treble damages for violations; (2) attorney fees for technical violations; (3) overuse by out-of-state litigants; and (4) reliance as a component of a CFA claim. The Memorandum also proposed an alternative organizational structure for the Commission's consideration.

Work on this project is ongoing as Staff reaches out to interested parties and endeavors to revise and restructure the CFA to ensure better clarity, excise redundancy and address ambiguities that have been identified by case law and scholars.

## Managerial Executives

In September 2015, the Commission authorized preliminary research and outreach relating to whether state police captains are considered managerial executives, a question addressed by the Appellate Division in *State, Div. of State Police, v. New Jersey State Trooper Captains Ass'n*, 411 N.J. Super. (App. Div. 2015).

Under N.J.S. 34:13-3, public employees are constitutionally entitled to engage in collective negotiations, and their representative organization is permitted to negotiate terms and conditions of employment. But managerial executives are excluded from participation in collective negotiations. Originally undefined in the statute, the Legislature defined "managerial executive" in 1974 and modified its definition in 2010. After the 2010 amendments, the statute defined "managerial executives" so as to include only personnel at or above the level of assistant commissioner.

Given the fact that "assistant commissioner" is not a title utilized by the Division of State Police, the Court could not glean from the plain language of the statute its proper application and turned to extrinsic evidence to determine the Legislature's intent, finding a clear intent to broaden the categories of public employees eligible to participate in collective negotiations. A Tentative Report is anticipated for 2016.

## Mandatory Sentencing

In February 2015, the Commission authorized initial research and outreach in the area of Mandatory Sentencing after a review of the decisions in *State v. Grate*, 220 N.J. 317 (2015), *Alleyne v. United States*, 133 S. Ct. 2151 (2013), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000).

*State v. Grate* arose from defendants' convictions for "second-degree unlawful possession of a weapon and third-degree unlawful possession of a weapon at an educational institution." Having determined that defendants were likely involved in organized criminal activity, the court made both sentences subject to the mandatory five-year parole disqualifier under N.J.S. 2C:39-5(i). One defendant petitioned for certification with the Supreme Court of New Jersey, arguing that the mandatory sentence imposed under New Jersey law was unconstitutional, citing *Alleyne*. Both the State and the attorney general conceded that *Alleyne* rendered N.J.S. 2C:39-5(i) unconstitutional as written and asked the Court to amend the statute, which the Court declined to do.

The Supreme Court of the United States held in *Alleyne v. United States* that any fact increasing the mandatory minimum sentence is an element that must be submitted to the jury, to be found beyond a reasonable doubt. In *Apprendi*, which involved a New Jersey statute, subsequently amended as P.L.2001, c. 443, that increased the maximum term of imprisonment from ten to 20 years, the Court identified a concrete limit on the types of facts that legislatures may designate as sentencing factors and held that a fact is, by definition, an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed. A Tentative Report is anticipated for 2016.

## New Jersey Filial Responsibility Statutes

In 2015, the Commission revisited a project presented to the NJLRC by the Office of the Ombudsman for the Institutionalized Elderly. The Commission reviewed the New Jersey filial responsibility statutes under Title 44, N.J.S. §§ 44:4-100 to 44:4-103 and N.J.S. §§44:1-139 to 44:1-142, in light of recent court rulings in other jurisdictions that require adult children to pay the costs of indigent parents for care in hospitals, nursing homes, and long-term care facilities. A 2012 Pennsylvania court decision required an adult son to pay a long-term care facility for the care that his mother received under the state's filial responsibility statutes, before she relocated to Greece. The decision raised concerns about the existing New Jersey filial responsibility statutes.

Commission Staff is conducting outreach and research concerning the existing New Jersey statutes, as well as existing filial responsibility statutes and repealed filial responsibility statutes in other jurisdictions to prepare a proposal for consideration concerning the future direction of the project.

## Nonprofit Organizations

In May 2015, the Commission authorized a project relating to New Jersey's Nonprofit Corporation Act (Nonprofit Act) as codified in N.J.S. Title 15A, and directed Staff to research and propose revisions that would harmonize the Nonprofit Act with New Jersey's Business Corporation Act (Business Act) as codified in N.J.S. Title 14A. This project originated from a member of the public who contacted the Commission to express concern that the Nonprofit Act has not yet been revised to reflect the realities of modern corporate governance.

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The Legislature enacted Title 15A in 1983 upon the recommendation of the Nonprofit Law Revision Commission. In a statement accompanying the enactment, the Nonprofit Law Revision Commission expressed an intention for the Nonprofit Act to closely track the Business Act for the benefit of both the nonprofit and business communities, and practitioners within the legal community. While the Business Act has been amended numerous times over the years, the Legislature has not similarly modified the Nonprofit Act.

Staff is in the process of reviewing the Nonprofit Act against the Business Act, with a goal of identifying Business Act modifications that would be similarly useful in the Nonprofit Act and proposing the appropriate revisions. This project has received the support of New Jersey's Center for Non-Profits, and Staff anticipates working closely with this organization in the preparation of a Tentative Report.

*"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)*

### **Obstructing Highways and Other Public Passages**

In September 2015, the Commission began work on a project emerging from the New Jersey Appellate Division's opinion in *State v. Bessey*, 2014 WL 99282205 (App. Div. 2015). In *Bessey*, the Defendant was charged with the petty disorderly persons offense of "obstructing highways and other public passages" in violation of N.J.S. 2C:33-7. Both the Municipal Court and the Law Division found defendant factually guilty of this offense. The Defendant appealed on the basis that she did not "knowingly" disobey the officer's command.

The court noted that applicable subsection of N.J.S. 2C:33-7 is silent as to the *mens rea* required for this offense. In the Criminal Code's general provisions, N.J.S. 2C:2-2 defines the various culpability requirements applicable to criminal prosecutions, and also addresses the construction of statutes lacking an express level of culpability. As a result, both parties to the appeal relied upon the "default" standard of culpability set forth in N.J.S. 2C:2-2c(3), each maintaining that a violation of subsection b. of 2C:33-7 requires a "knowing" mental state.

The appellate court rejected the parties' argument that N.J.S. 2C:2-2c(3) imposes a "knowing" mental element upon this disorderly person offense, stating "this provision is intended to apply only to a statute defining a *crime*. Defendant was charged and convicted of a petty disorderly persons offense, *not a crime*" (emphasis in original).

The court's determination as to the appropriate *mens rea* requirement for this subsection relied on the Legislature's statutory use of the word "refuses" and was guided by its dictionary definition as "an act of defiance" that is "both knowing and willful." Ultimately, the court affirmed the Defendant's conviction, concluding that she willfully and knowingly refused to obey the officer's reasonable request.

Although the court's interpretation of the word "refuses" in this instance comports with the default standard of knowing culpability contained in N.J.S. 2C:2-2c(3), the opinion clarifies that the gap-filler culpability established in 2C:2-2c(3) applies only to crimes and cannot be read into disorderly person offenses.

Staff presented a Memorandum to the Commission in December of 2015 providing additional background information regarding culpability requirements for disorderly persons offenses and anticipates preparing a Draft Tentative Report for consideration in early 2016.

### **Property Liability Insurance Guaranty Association Act (PLIGAA)**

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 for 2016.

### **Public Health and Safety**

In July of 2015, the Commission initiated a project concerning N.J.S. 2C:40-18, a statutory provision which establishes several degrees of criminal fault for an individual who knowingly violates, or fails to perform a duty required by, a public health or safety law, and recklessly causes death or bodily injury as a result. This provision came to the Commission's attention as a result of the New Jersey Supreme Court's decision in *State v. Lenihan*, 219 N.J. 251 (2014).

In *Lenihan*, the eighteen-year old defendant was driving with her sixteen-year old friend in the passenger seat and lost control of the vehicle, colliding into a guardrail. Police found evidence of "huffing" at the accident scene and neither defendant nor her passenger was wearing a seat belt as required by N.J.S. 39:3-76.2f. The passenger eventually died from her injuries; defendant was charged with a third degree crime pursuant to N.J.S. 2C:40-18, with the knowing violation of the seat belt law serving as the predicate offense.

The trial court found defendant guilty of violating N.J.S. 2C:40-18(a). The appellate court affirmed the verdict - rejecting defendant's constitutional challenges and determining that the seat belt law is the type of public health and safety law contemplated by this statutory provision.

Defendant appealed to the New Jersey Supreme Court and argued that (1) her violation of the seat belt statute could not serve as a predicate offense for conviction pursuant to N.J.S. 2C:40-18 because violations of the seat belt statute does not threaten "the public health and safety," but only the health and safety of the injured individual; (2) she lacked notice that such a "minor violation" would result in third degree criminal charges; and (3) N.J.S. 2C:40-18 is unconstitutionally vague and should be narrowly interpreted. Unpersuaded by these arguments, the Court affirmed defendant's conviction and held that the statute was not unconstitutionally vague as applied to the defendant in this instance.

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Staff is currently researching and gathering further information regarding the intent, scope and potential applicability of N.J.S. 2C:40-18, and anticipates preparing a Tentative Report for the Commission's consideration in early 2016.

### **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 similar to the Uniform Act, the Draft Final Report recommended suspending the project until the new laws have 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

*"The reports of my retirement have been greatly exaggerated. I could not really leave; the work here is important and endlessly fascinating."*

*John M. Cannel, Retired  
"Reviser of Statutes"  
(2015)*

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, Staff prepared a Memorandum analyzing these areas for the Commission's consideration. In February 2015, Staff also prepared a Tentative

Report which recommended strengthening New Jersey's human trafficking laws by clarifying business entity liability and specifically addressing sexually explicit performances.

The Commission reviewed and considered these proposals and has instructed Staff to conduct additional outreach with interested stakeholders. Work on this project is ongoing and Staff is working in conjunction with the recently established Human Trafficking Commission to monitor and evaluate legislative efforts to combat human trafficking in New Jersey.

### **Uniform Asset-Preservation Orders Act**

Public comment was offered to the Commission in January 2015 concerning the Uniform Asset-Preservation Orders Act (UAPOA). 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 address 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 focuses on assets that are in a foreign jurisdiction and beyond

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the reach of an in rem order for their preservation. The UAPOA allows for international cross-border recognition of the preservation order to thwart the rapid movement of funds between jurisdictions.

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. The UAPOA has not been enacted, but in 2015, it was introduced in Alabama, and previously in the District of Columbia, North Dakota and Colorado.

Commission Staff is considering the use and effect of asset-preservation orders that exist in common-law jurisdictions, like England and Canada, while conducting research and outreach to determine if the drafting inconsistencies identified by commenters may be reconciled in a modified version of the uniform law. Work on this project is ongoing and a Tentative Report regarding the UAPOA is planned for early 2016.

### **Uniform Common Interest Ownership Act**

The Commission first approved a report recommending the New Jersey Common Interest Ownership Act in 2000. While that Act was based on UCIOA, it added provisions providing protections for unit owners and made some improvement in style. The Act proved controversial and, though it received consideration by the Legislature, it was not enacted. In 2007, the Commission returned to the area of condominium law. The focus was on what appeared to be the most pressing problems, the relationship between unit owners and boards. That Report has not been acted on by the Legislature.

Shortly after the Commission released that report, the Uniform Law Commission released the updated UCIOA. Common Interest law is of paramount importance. It has been claimed that more than one in seven residences in New Jersey are in common interest communities. The current condominium law, N.J.S. 46:8B-1 et seq., was enacted in 1969. It was amended or supplemented in 1975, 1979, 1980, 1985, 1991, 1995, 1996, 1997 and 2007, but these changes are narrow and deal with very particular issues. The current law does not provide comprehensive rules for condominiums. It also does not cover cooperatives, and whether it covers other common interest communities called “planned unit developments” (PUDs) remains a question.

The trouble with drafting a law on common interest communities is that a condominium is more than a free association and less than a governmental unit. It must have the power to make, change and enforce rules concerning unit owners. In a real sense, owners are not free to leave if they do not like the rules. But although a condominium may exercise something analogous to governmental power, it is not a government and is not subject to governmental limitations. Drafting a statute that balances these interests is difficult.

The Commission decided that rather than attempt to deal with the whole of UCIOA, it would concentrate on the first two Articles. These articles will form a framework of law for all of the different kinds of common interest communities. Contentious issues (mainly in Article 3 of UCIOA) could be best handled with a series of small projects on particular issues (elections, meetings, alternative dispute resolution, etc.). The Commission expects to complete a Report early in 2016.

**Uniform Interstate Enforcement of Domestic Violence Protection Orders**

The Commission considered, in April 2015, the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (the Act) which seeks to enforce the full faith and credit protection afforded to domestic violence victims when they cross state lines. The Uniform Law Commission (ULC) promulgated the Act in 2000, and later amended it in 2002. Twenty jurisdictions have adopted one of the following: the original Act, the amended Act, or a modified version of the Act.

In New Jersey, the prevention of domestic violence is governed in the State through statutory provisions under: the Prevention of Domestic Violence Act (PDVA), N.J.S. 2C:25-17, et seq., guidelines from the Office of the New Jersey Attorney General (OAG), Rules of Court, and modules prepared by the Administrative Office of the Courts and the Division of Criminal Justice (DoCJ).

The Commission continues to monitor pending legislation in this area of the law, while conducting outreach to determine whether codifying the OAG guidelines or adopting a modified version of the Act will give statutory authority to the existing procedures in New Jersey that provide full faith and credit to out-of-state protection orders. Commission Staff anticipates that the findings resulting from this research will be presented to the Commission in the first quarter of 2016.

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**8. – No Action Recommended**

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**8. – No Action Recommended****Liability; Weather related public streets and highways – N.J.S. 59:4-7**

The Commission considered, in September 2015, a potential project to clarify the statutory language of N.J.S. 59:4-7, which governs the liability of public entities for injuries resulting from weather-related road conditions. The concurring opinion in *Pico v. State*, 116 N.J. 55 (1989), was brought to Commission Staff's attention by a former legislative law clerk during the course of independent research. The opinion noted that the statutory language of N.J.S. 59:4-7 fails to confer immunity, since there is no liability to immunize against if a claimant's injuries find their cause solely in weather-related conditions. The opinion concludes that revisions to the statutory language would better effectuate the legislative intent of the statute, by establishing that there is "no duty to clean up those conditions of streets and highways that are produced by storms" and other natural events.

The Commission found merit in the recommendations presented in the concurring opinion of *Pico v. State*, but concluded that the case law in this area is well-settled, and therefore, decided not to authorize a project to clarify N.J.S. 59:4-7, at this time.

**Local Redevelopment and Housing Law**

In July 2015, the Commission considered a potential project regarding the "Local Redevelopment and Housing Law," ("LRHL"), the New Jersey statutory framework that permits municipalities to categorize private property as being "in need of redevelopment," and thus subject to taking via eminent domain.

The categorization of private property as being "in need of redevelopment" under the LRHL is a controversial issue in New Jersey that has sparked significant litigation for decades. In 2007, the New Jersey Supreme Court handed down its opinion in *Gallenthin Realty Development, Inc. v. Borough of Paulsboro*, 191 N.J. 344 (2007), in which the Court unanimously held that the LRHL was limited by the Blighted Areas Clause of the New Jersey Constitution (N.J. Const. art. 8, § 3, par. 1). In March of 2015, the New Jersey Supreme Court handed down its divided opinion in *62-64 Main Street, L.L.C. v. Mayor and Council of City of Hackensack*, 221 N.J. 129 (2015), in which the Court's determination differed from the precedent established in the *Gallenthin* opinion.

*"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)

The Commission determined that while statutory drafting might clarify the issues presented in *62-64 Main Street*, this area of the law remains unsettled and the proposed project might extend beyond the Commission's mandate. As a result, the Commission chose to await further judicial review to clarify this area of the law.

**Nursing Home Responsibilities and Residents' Rights Act**

In July 2015, the Commission considered a project pertaining to a provision of the Nursing Home Responsibilities and Residents' Rights Act ("NHA"). The statutory provision, N.J.S. 30:13-4.2, defines the

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causes of action that private parties and the Department of Health (“DOH”) can maintain upon a particular violation. The goal of the potential project was to clarify the statute in light of the decision regarding the scope of applicability of private parties to bring an action under N.J.S. 30:13-4.2.

The ambiguity that arguably exists in the statute is the applicability of the language of the first instance of “this act” referring to private parties in N.J.S. 30:13-4.2, and whether that language grants private parties the ability to sue for any violation of the NHA, or only for a violation of the provision directly preceding it, N.J.S. 30:13-4.1, that regulates the handling and investment of nursing home resident’s security deposit.

Since the case that brought the issue to Staff’s attention (*Ptasynski v. Atlantic Health Systems, Inc.*, 440 N.J. Super 24, (App. Div. 2015)) was reversed and remanded, the Commission, in accordance with its practice, declined to pursue a project in this area until such time as a final decision has been entered by the court.

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## 9. – Looking Ahead to the Work of the NJLRC in 2016



**8. – Looking Ahead to the Work of the NJLRC in 2016**

Although the Commission's underlying mission and the nature of its work do not change from year to year, or from one legislative session to the next, the Commissioners and Staff strive to identify and implement ways in which it can improve its process, product, and communication in the coming year and always welcome suggestions from interested parties regarding how it might do so.

Efforts to enhance outreach, transparency, and the use of electronic media and communications are ongoing. The meetings of the Commission are open to the public, as are the records of its work, and the Commission actively solicits public comments on its projects, which are widely distributed to interested persons and groups.

Within the framework of State government, the work done by the Commission is complementary to that of the Office of Legislative Services. Each entity has a different role to play with regard to legislation, and the NJLRC endeavors to work collaboratively with the Office of Legislative Services and to support the Legislature by bringing issues to the attention of Legislators that might not otherwise receive consideration.

As is noted in the foregoing pages, the release of a Final Report by the Commission is followed by outreach efforts to identify members of the Legislature who may be interested in sponsoring legislation in any given area. The Commission looks forward, in the coming year, to increased interaction with Legislators in order to better support the Legislature and to facilitate the implementation of Commission recommendations.