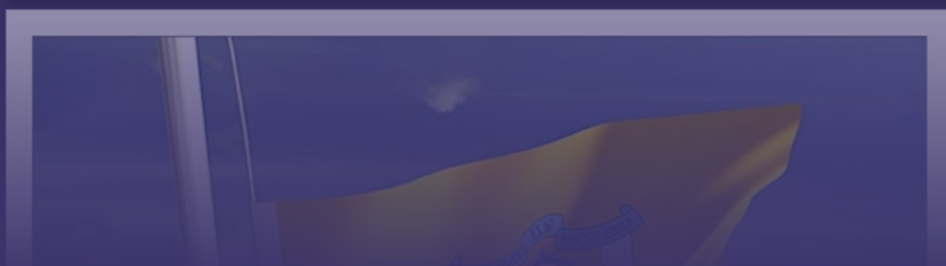


ANNUAL REPORT - 2017

New Jersey Law Revision Commission



THIRTY-FIRST ANNUAL REPORT

2017





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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

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

As the Chairman of the New Jersey Law Revision Commission (“NJLRC”), I am pleased to present the 2017 Annual Report of the New Jersey Law Revision Commission for the Legislature’s consideration, marking the conclusion of the 31st year of the Commission’s work. In 2017, four bills were signed into law based on Reports of the NJLRC and two bills were signed into law after considerable work by Commission Staff to review and revise a Uniform Act for implementation in New Jersey.

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. The publication of scholarly articles by Commission Staff members, and the citation of Commission Reports by academic writers and judges represent additional practical applications of the work of the NJLRC. In the last year, there were also references to the Commission’s work in the *New Jersey Law Journal* and *The Star Ledger*, expanding the possibilities for input from the broader community.

The past year marked a year of “revision” at the Commission, with the departure of three Staff attorneys whose work was of significant benefit to the Commission and helped to further its mission. We wish Jayne J. Johnson, Vito J. Petitti, and Susan Thatch all the best as they move forward with new opportunities. At the same time, we welcome Timothy J. Prol and Samuel M. Silver to our Commission Staff, both of whom began making valuable contributions to the work of the Commission immediately upon joining us.

We are also pleased to announce the creation of a new Fellowship position at the NJLRC. Modeled on judicial clerkships, the Commission Fellowship is available to a law school graduate who will work for the Commission on a full-time basis for a year after graduation. Outreach to New Jersey’s three law school campuses resulted in the selection of a Fellow in 2017 who will begin work in the summer of 2018. In addition, the Commission’s outreach to 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) continues to provide students with opportunities to participate in the Commission’s work as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit.

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 2017. 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 the law 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

Table of Contents

	Page
1. – Overview of the Work of the NJLRC in 2017	7
2. – Enacted Reports and NJLRC Case and Journal References	18
3. – History and Purpose of the Commission	26
4. – Final Reports and Recommendations 2017	29
5. – Tentative Reports	33
6. – Work in Progress	37
7. – No Action Recommended	51
8. – Members and Staff of the NJLRC in 2017	54
9. – Looking Ahead to the Work of the NJLRC in 2018	63

1. – Overview of the Work of the NJLRC in 2017



1. – Overview of the Work of the NJLRC in 2017

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 2017, the New Jersey Law Revision Commission worked on 51 individual projects. Work on six of those projects was completed in 2017, and Final Reports and Recommendations were submitted to the Legislature for consideration. The Commission also released five 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 35 projects – some authorized by the Commission in 2017, and some authorized in prior years - that have not yet reached the Tentative Report stage. During the course of the year, the NJLRC also examined five other areas of the law in which it determined that further work by the Commission was not appropriate.

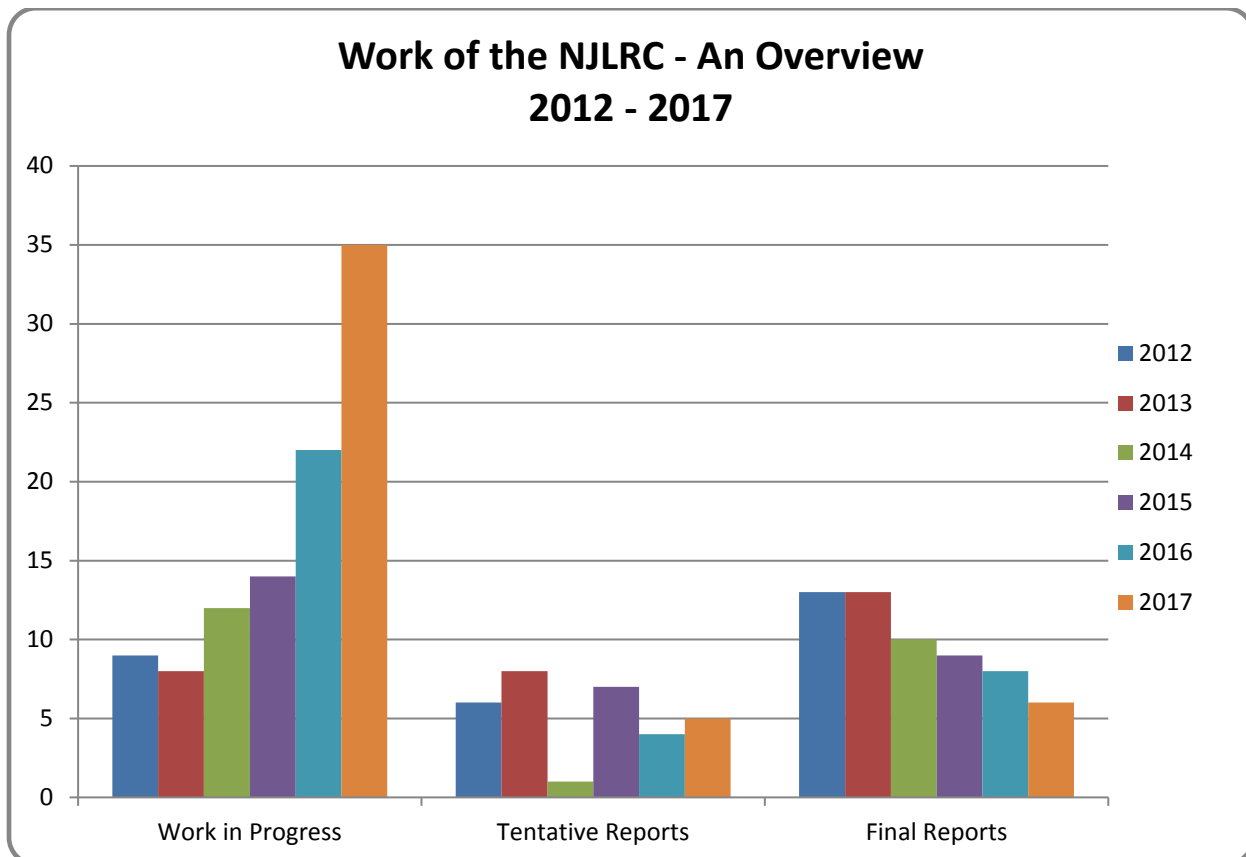
The NJLRC also continues to expand its general outreach, in keeping with its statutory mandate to consider recommendations from “learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally for the improvement and modification of the general and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

NJLRC's outreach in 2017 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 hiring legislative law clerks, the NJLRC provides opportunities for student credit-earning externship placements, internships, and student pro bono hours. In addition, the Commission recently created a new Fellowship position at the NJLRC. Modeled on judicial clerkships, the Commission Fellowship is available to a law school graduate who will work for the Commission on a full-time basis for a year after graduation

Staff also submitted two manuscripts for publication to the Seton Hall Legislative Journal. The first was written by Laura C. Tharney, Jayne J. Johnson, Vito J. Petitti, and Susan G. Thatch, *Does the Uniform Fit?: The New Jersey Law Revision Commission's Review of the Acts of the Uniform Law Commission*, was published at 41 SETON HALL LEGIS. J. 45 (2017). The second, written by Laura C. Tharney and Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, was published at 41 SETON HALL LEGIS. J. 329 (2017).

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). 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 2016 – 2017 Legislative Session:

Bulk Sale Notification Requirements (L.2017, c.307) -- The Commission's Report recommended changes to clarify that when more than one individual, trust, or estate jointly own real property, including a home, non-commercial dwelling unit, or seasonal rental, the sale of such property is exempt from the bulk sale notification requirements as it would be if a single individual, trust, or estate owned it.

Millers of Grain (L.2017, c.227) – Derived from a more expansive Final Report of the Commission issued in 2012 and largely enacted in 2014, the portion of the Report enacted in 2017 recommended repeal of the law regulating charges that could be assessed by a miller for grinding grain.

Overseas Residents Absentee Voting Law (L.2017, c.39) – The Report recommended revision of Overseas Residents Absentee Voting Law in response to the Uniform Military and Overseas Voters Act in order to recognize the rights of overseas citizens who were not previously covered by existing New Jersey law, to clarify the existing law, and to make certain technical changes to the law.

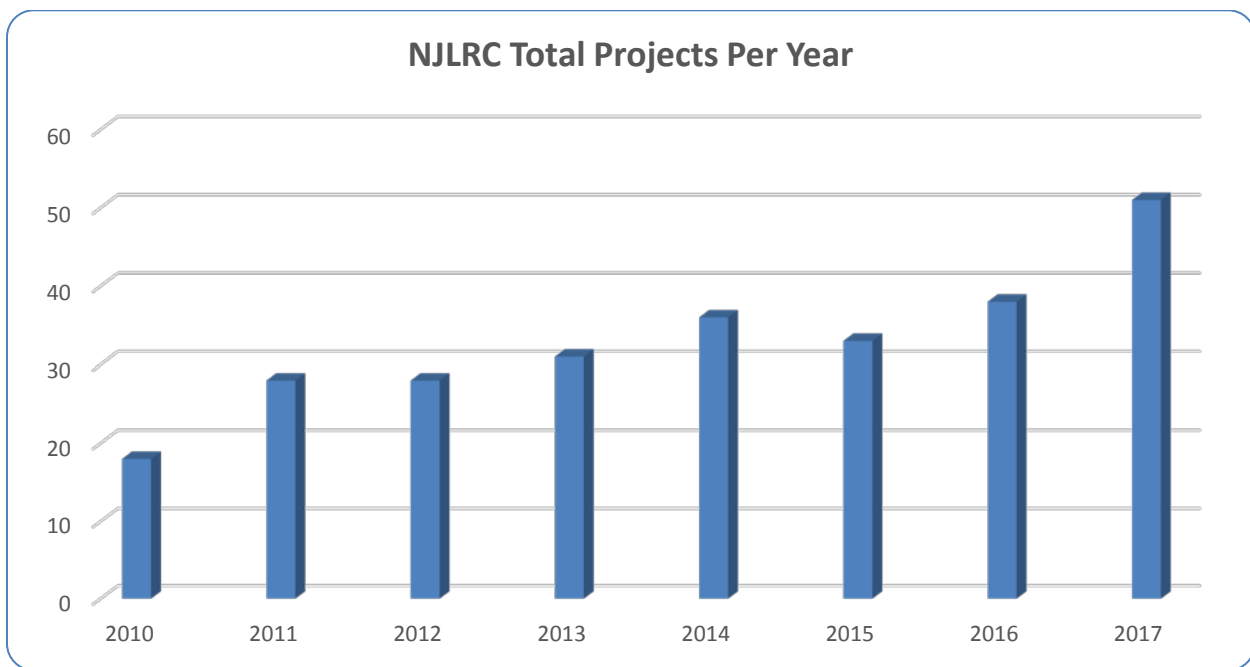
Pejorative Terms 2017 (L.2017, c.131) – The Report recommended changes to eliminate demeaning, disparaging, and archaic terminology used when referring to persons with a physical or sensory disability or a substance use disorder. The Report was consistent with the Legislative goal expressed in P.L. 2010, c.50 to ensure that the statutes and regulations of the State do not contain language that is outdated and disrespectful to persons with a disability and it expands the scope of prior NJLRC Reports (two earlier Reports were released dealing with this terminology as it related to persons with developmental, cognitive or psychiatric disabilities (in 2008, and in 2011 - the latter Report was the basis of A-3357/S-2224, which received bipartisan support, passed both houses of the Legislature unanimously, and was signed into law by the Governor)).

Uniform Fiduciary Access to Digital Assets Act (L.2017, c.237) – Although the Commission did not issue a Final Report concerning this Act, Commission Staff had the opportunity to work with Legislators, Legislative Staff, Staff members from the Office of Legislative Services, and Staff members from the Uniform Law Commission in order to review and revise the Act for enactment in New Jersey.

Uniform Foreign Country Money-Judgment Recognition Act (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report, but engaged in work and provided support for the bills underlying the Act.

Uniform Interstate Family Support Act (L.2016, c.1) – The Report recommended enactment of the latest version of the Uniform Interstate Family Support Act with some minor modifications to reflect New Jersey-specific practice. The latest version of the Act changes state law to allow enforcement of foreign support orders.

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.



Bills Introduced Based on NJLRC Work:

In addition to the NJLRC projects enacted during the in 2016-2017 Legislative Session, the following NJLRC projects were the subject of bills introduced in 2016 and 2017, or represent subject areas on which the NJLRC provided information and support to the Legislature:

- (Effect of) Abstentions
- Adverse Possession
- Landlord-Tenant
- (Revised Uniform) Law on Notarial Acts
- Standard Form Contracts
- (Uniform) Voidable Transactions 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 Arthur Barclay
 Assemblyman Daniel R. Benson
 Assemblywoman Marlene Caride
 Assemblyman Michael Patrick Carroll
 Assemblyman Nicholas Chiaravalotti
 Assemblyman Herb Conaway, Jr.
 Assemblyman Craig J. Coughlin
 Assemblyman Ronald S. Dancer
 Assemblyman Wayne P. DeAngelo
 Assemblywoman Joann Downey
 Assemblywoman Patricia Egan Jones
 Assemblyman Tim Eustice
 Assemblyman Louis D. Greenwald

Assemblyman Eric Houghtaling
Assemblyman Gordon M. Johnson
Assemblyman James J. Kennedy
Assemblywoman Pamela R. Lampitt
Assemblyman Vincent Mazzeo
Assemblyman John F. McKeon
Assemblywoman Angela V. McKnight
Assemblywoman Gabriela M. Mosquera
Assemblywoman Nancy J. Pinkin
Assemblyman Kevin J. Rooney
Assemblyman Gary S. Schaer
Assemblywoman Cleopatra G. Tucker
Assemblywoman Valerie Vainieri Huttle
Assemblyman Jay Webber
Senator Peter J. Barnes, III
Senator Christopher Bateman
Senator James Beach
Senator Nilsa Cruz-Perez
Senator Patrick J. Diegnan, Jr.
Senator Steven V. Oroho
Senator Nicholas P. Scutari
Senator Robert W. Singer
Senator Troy Singleton
Senator Jeff Van Drew
Senator Joseph F. Vitale
Senator Jim Whelan

The NJLRC Would Like to Thank:

In addition to the individuals named elsewhere in this Annual Report, the Commission extends its thanks to the following individuals and organizations for their valuable suggestions, input, and support for various projects on which the NJLRC worked in 2017.

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:

Jones Addo, Reference Law Librarian, New Jersey State Law Library

Administrative Office of the Courts, New Jersey

American Bar Association

The American Law Institute

Michael Ashton, Live2Inspire

Julius Bailey, New Jersey Senate Majority Office

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

Barb’s Harley-Davidson

Miriam Bavati, Principal Counsel, Judiciary Section, Office of Legislative Services

Lindsay Beaver, Legislative Counsel, Uniform Law Commission

Kathleen M. Boozang, Dean, Seton Hall Law School

Claude Brodesser-Akner, NJ.com and The Star-Ledger, Statehouse Bureau

Burlington County Prosecutor’s Office

Thomas J. Cafferty, Gibbons, P.C.

Veronica L. Calder, Archivist, New Jersey State Archives

Lisa Chapland, Esq., Director of Government Affairs, New Jersey State Bar Association

Jerry Clancy, Princeton Desktop Systems, Inc.

Judith Cole, Executive Office Coordinator, The American Law Institute

Richard R. Comerford, New Jersey Office of Legislative Services Library

Marjorie E. Crawford, Head of Technical and Automated Services, Rutgers School of Law - Newark

Linda Czipo, Executive Director, Center for Non-Profits

Department of the Treasury, New Jersey

Division of Commercial Recording, New Jersey

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

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

Sgt. Ken Drost, Vice President, New Jersey Police Traffic Officers Association

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

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

David Ewan, Esq., New Jersey Land Title Association



COMMISSION STAFF MEMBERS ALSO PARTICIPATE IN BAR ASSOCIATION MEETINGS, PANEL DISCUSSIONS, PUBLISH ARTICLES FOCUSING ON THE WORK OF THE COMMISSION, AND PRESENT INFORMATION ABOUT THE COMMISSION TO COMMUNITY GROUPS AND IN CONTINUING LEGAL EDUCATION SEMINARS. THIS IS DONE TO INCREASE AWARENESS OF THE COMMISSION’S WORK AMONG MEMBERS OF THE PUBLIC AND OF THE STATE BAR ASSOCIATION SO THAT THOSE AUDIENCES KNOW OF THEIR OPPORTUNITY TO ADD THEIR VOICES TO THE DISCUSSION OF THE IMPORTANT ISSUES UNDER CONSIDERATION BY THE COMMISSION EACH YEAR.

Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329, 345 (2017)

Mahlon L. Fast, J.S.C. (Ret.), Ehrlich, Petriello, Gudin & Plaza, P.C.

Todd Feldman, Editorial Coordinator, The American Law Institute

James Ferguson, New Jersey Motor Vehicle Commission

Alexander Fineberg, Counsel, Westcor Land Title Insurance Company

Jessica Formichella, J.D. Candidate, Seton Hall University School of Law

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

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

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

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

Casey Gillece, Legislative Counsel, Uniform Law Commission

Stacey Gould, Esq.

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

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

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

Hunterdon County Clerk's Office

Cynthia Jahn, Esq., General Counsel, Director of New Jersey School Boards Association

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

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

Beatrice E. Kandell, Esq., Skoloff & Wolfe, P.C.

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

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

Peter H. Lederman, Esq., Davison, Eastman, Munoz, Lederman & Paone, P.A.

Alison L. Lefkovitz, Assistant Professor and Director of Law, Technology and Culture Program, New Jersey Institute of Technology

Legal Services of New Jersey

Jennifer Lehman, Legislative Director, Assemblyman Louis D. Greenwald

Eugene Lepore, New Jersey Senate Majority Office

Maria Lepore, Esq., Chief Counsel, New Jersey Association of School Administrators

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

Christine F. Li, Esq., Greenbaum, Rowe, Smith & Davis, LLP

Jennifer A Loheac, Esq., Community Associations Institute

Nomi Lowy, Esq., Gibbons, P.C.

Thomas Lynch, Chief of Staff to Assemblyman
Patrick Diegnan

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

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

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

Mark McCaslin, Fiscal Officer, Office of Legislative
Services, Administrative Unit

Mercer County Clerk’s Office

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

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

Morris County Clerk’s Office

Jim Moseley, President, Limousine Association of
New Jersey

Motorcycle Mall

Lt. Dan Murray, Roxbury Police Department

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

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



A FREQUENT SOURCE OF PROJECTS FOR THE COMMISSION IS CASE LAW IN WHICH A COURT CALLS AN ISSUE TO ATTENTION OF LEGISLATURE. COURTS HAVE DONE SO BY IDENTIFYING AN AMBIGUITY IN THE LANGUAGE, SUGGESTING THAT THE LEGISLATURE MIGHT WISH TO REVISIT A PARTICULAR AREA OF THE LAW, AND BY DETERMINING THAT A PARTICULAR PROVISION IS UNCONSTITUTIONAL OR HAS BEEN SUPERSEDED BY FEDERAL LAW. COMMISSIONERS, COMMISSION STAFF, AND MEMBERS OF PUBLIC ARE ALSO SOURCES OF COMMISSION PROJECTS. A THIRD CONSISTENT SOURCE OF PROJECTS IS THE “LEARNED BODIES” WHOSE WORK THE COMMISSION IS CALLED UPON TO CONSIDER.

Laura C. Tharney, Jayne J. Johnson, Vito J. Petitti, & Susan G. Thatch, DOES THE UNIFORM FIT?: THE NEW JERSEY LAW REVISION COMMISSION’S REVIEW OF THE ACTS OF THE UNIFORM LAW COMMISSION, 41 SETON HALL LEGIS. J. 45, 47-48 (2017)

New Jersey State Bar Association

New Jersey State Library

Benjamin Orzeske, Legislative Counsel, Uniform Law Commission

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

Akshar Patel, J.D. Candidate, Seton Hall University School of Law

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

Elizabeth Petrick, Assistant Professor, New Jersey Institute of Technology

Thomas H. Prol, Immediate Past President, New Jersey State Bar Association

Jonathan Pushman, Legislative Advocate, New Jersey School Boards Association

Kenneth Ritchie, Reference Law Librarian, New Jersey State Library

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

Rutgers School of Law – Newark, International Human Rights Clinic

Colleen Schulz-Eskow, New Jersey Department of Education

Bruce S. Shapiro, Local Government & Regulatory Affairs Manager, New Jersey Realtors®

Jeffrey Shapiro, Esq., Lowenstein Sandler, LLP

Jordan Shedlock, New Jersey Office of Legislative Services Library

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

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

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

Tracy M. Thomson, Esq., Assistant Attorney General, Chair-NJ Human Trafficking Task Force

Michael L. Ticktin, Director of Legislative Research for Senator Nilsa Cruz-Perez

Uniform Law Commission

Kenneth Vercammen, Esq., Kenneth Vercammen & Associates, P.C.

Kae M. Warnock, Policy Specialist, Legislative Management, National Conference of State Legislatures

Jeffrey L. Weinstein, Assistant Prosecutor, Appellate and PCR Unit, Hunterdon County Prosecutor's Office

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

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

Det. Joseph Williams, Berkeley Heights Police Department

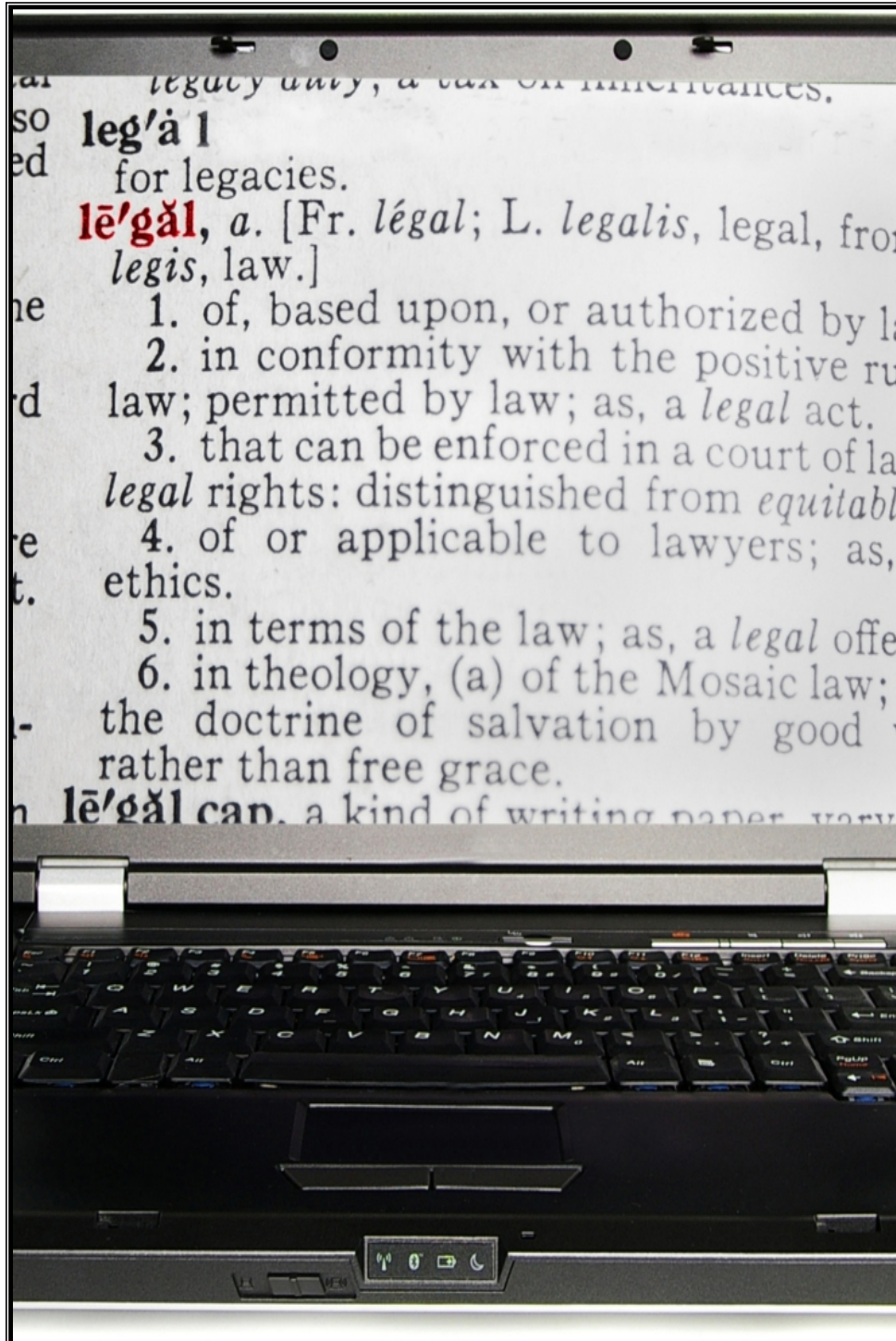
Ellen T. Wry, Director, Central Appellate Research Staff, New Jersey Judiciary

Kimberly Yonta, Esq., Second Vice-President, New Jersey State Bar Association

John Zimmerman, Chief of Police, Kenilworth Police Department



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 53 bills based upon 72 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:

2017

- *Bulk Sale Notification Requirements* (L.2017, c.307) -- The Commission's Report recommended changes to clarify that when more than one individual, trust, or estate jointly own real property, including a home, non-commercial dwelling unit, or seasonal rental, the sale of such property is exempt from the bulk sale notification requirements as it would be if a single individual, trust, or estate owned it.
- *Millers of Grain* (L.2017, c.227) – Derived from a more expansive Final Report of the Commission issued in 2012 and largely enacted in 2014, the portion of the Report enacted in 2017 recommended repeal of the law regulating charges that could be assessed by a miller for grinding grain.
- *Overseas Residents Absentee Voting Law* (L.2017, c.39) – The Report recommended revision of Overseas Residents Absentee Voting Law to recognize the rights of overseas citizens who were not previously covered by existing New Jersey law, to clarify the existing law, and to make certain technical changes to the law.
- *Pejorative Terms 2017* (L.2017, c.131) – The Report recommended changes to eliminate demeaning, disparaging, and archaic terminology used when referring to persons with a physical or sensory disability or a substance use disorder. The Report was consistent with the Legislative goal expressed in P.L. 2010, c.50 to ensure that the statutes and regulations of the State do not contain language that is outdated and disrespectful to persons with a disability and it expands the scope of prior NJLRC Reports (two earlier Reports were released dealing with this terminology as it related to persons with developmental, cognitive or psychiatric disabilities (in 2008, and in 2011 - the latter Report was the basis of A-3357/S-2224, which received bipartisan support, passed both houses of the Legislature unanimously, and was signed into law by the Governor)).
- *Uniform Fiduciary Access to Digital Assets Act* (L.2017, c.237) – Although the Commission did not issue a Final Report concerning this Act, Commission Staff had the opportunity to work with Legislators, Legislative Staff, Staff members from the Office of Legislative Services, and Staff members from the Uniform Law Commission in order to review and revise the Act for enactment in New Jersey.
- *Uniform Foreign Country Money-Judgment Recognition Act* (L.2017, c.365) – This, too, was an area of the law on which the Commission did not issue a Final Report, but engaged in work and provided support for the bills underlying the Act.

2016

- *Uniform Interstate Family Support Act* (L2016, c.1.) – The Report recommended enactment of the latest version of the Uniform Interstate Family Support Act with some minor modifications to reflect New Jersey-specific practice. The latest version of the Act changes state law to allow enforcement of foreign support orders.

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.
 - *Uniform Commercial Code – Article 1 – General Provisions* (L.2013, c.65) – The Report proposed updates to Article 1 of the Uniform Commercial Code that contains definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC.
 - *Uniform Commercial Code – Article 4A – Funds Transfers* (L.2013, c.65) – The Report proposed updating Article 4A of the Uniform Commercial Code to address what would otherwise have been a gap in the
-

law since 4A does not cover a fund transfer governed by federal Electronic Funds Transfer Act (EFTA). Among the changes brought about by the Dodd-Frank Act, the Wall Street Reform and Consumer Protection Act, is an amendment to the EFTA so that the law will govern “remittance transfers” (the electronic transfer of funds to a person located in a foreign country requested by a consumer and initiated by a person or financial institution that provides remittance transfers for consumers in the normal course of its business), whether or not those remittance transfers are also “electronic fund transfers” as defined in EFTA. When the federal law changed in February 2013, without the modification to Article 4A, a fund transfer initiated by a remittance transfer would have been entirely outside the coverage of Article 4A, even if the remittance transfer is not an electronic fund transfer, and would not have been covered by either law.

- *Uniform Commercial Code – Article 7 – Documents of Title* (L.2013, c.65) – The Report proposed modifications to Article 7 of the Uniform Commercial Code to accomplish two primary objectives: (1) allowance of electronic documents of title, and (2) introduction of provisions to reflect trends at the state, federal, and international levels.
- *Uniform Commercial Code – Article 9 – Secured Transactions* (L.2013, c.65) – The Report proposed changes to Article 9 of the Uniform Commercial Code, which governs security agreements where the property is not real estate. These arrangements are the basis of an important part of commercial finance and many involve interstate transactions, so it is important that the state laws governing them are as nearly uniform as possible. The most significant change proposed concerns specification of the name of debtors who are natural persons.

2012

- *New Jersey Adult Guardianship and Protective Proceedings Jurisdiction Act* (L. 2012, c.36) – The Report proposed enactment of a Uniform Law Commission Act, revised for use in New Jersey, to provide a uniform mechanism for addressing multi-jurisdictional adult guardianship issues that have become time-consuming and costly for courts and families.
- *Revised Uniform Limited Liability Company Act* (L. 2012, c.50) – The Report proposed enactment of a revised Uniform Law Commission Act that permits the formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership tax treatment.

2011

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

Electronic Transactions Act (UETA), L.2001, c.116; it required the acceptance of electronic alternatives to paper documents.

Historical Enactments:

The remaining projects enacted since the Commission began work are:

- Anatomical Gift Act (L.2001, c.87)
- Cemeteries (L.2003, c.261)
- (Uniform) Child Custody Jurisdiction and Enforcement Act (L.2004, c.147)
- Civil Penalty Enforcement Act (L.1999, c.274)
- Construction Lien Law (L.2010, c.119)
- Court Names (L.1991, c.119)
- Court Organization (L.1991, c.119)
- Criminal Law, Titles 2A and 24 (L.1999, c.90)
- (Uniform) Electronic Transactions Act (L.2001, c.116)
- Evidence (L.1999, c.319)
- (Uniform) Foreign-Money Claims Act (L.1993, c.317)
- Intestate Succession (L.2001, c.109)
- Juries (L.1995, c.44)
- Lost or Abandoned Property (L.1999, c.331)
- Material Witness (L.1994, c.126)
- (Uniform) Mediation Act (L.2004, c.157)
- Municipal Courts (L.1993, c.293)
- Parentage Act (L.1991, c.22)
- Probate Code (L.2001, c.109)
- (Uniform) Prudent Management of Institutional Funds Act (L.2009, c.64)
- Recordation of Title Documents (L.1991, c.308)
- Repealers (L.1991, c.59, 93, 121, 148)
- Replevin (L.1995, c.263)
- School Background Checks (L.2007, c.82)
- Service of Process (L.1999, c.319)
- Statute of Frauds (L.1995, c.36)
- Surrogates (L.1999, c.70)
- Tax Court (L.1993, c.403)
- Title 45 – Professions (L.1999, c.403)
- Uniform Commercial Code Article 2A – Leases (L.1994, c.114)
- Uniform Commercial Code Article 3 – Negotiable Instruments (L.1995, c.28)
- Uniform Commercial Code Article 4 – Bank Deposits (L.1995, c.28)
- Uniform Commercial Code Article 4A – Funds Transfers (L.1994, c.114)
- Uniform Commercial Code Article 5 – Letters of Credit (L.1997, c.114)
- Uniform Commercial Code Article 8 – Investment Securities (L.1997, c.252)
- Uniform Commercial Code Article 9 – Secured Transactions (L.2001, c.117)

New Jersey Cases that Mention the NJLRC:

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

- *Gately v. Hamilton Memorial Home, Inc.*, 442 N.J. Super. 542 (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. Neppel*, 2007 WL 4118319 (App. Div. 2007)
- *Semencz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebroer-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)
- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (1999)
- *Prant v. Sterling*, 332 N.J. Super. 369 (Ch. Div. 1999)
- *Wingate v. Estate of Ryan*, 149 N.J. 227 (1997)
- *State v. Storm*, 141 N.J. 245 (1995)

Journal Articles and Scholarly Reference Materials that Mention the NJLRC:

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

- Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329 (2017)
- Laura C. Tharney, Jayne J. Johnson, Vito J. Petitti, & Susan G. Thatch, *Does the Uniform Fit?: The New Jersey Law Revision Commission's Review of the Acts of the Uniform Law Commission*, 41 SETON HALL LEGIS. J. 45, 47-48 (2017)
- Bea Kandell & Christopher McGann, *How Deep is the Black Hole, and How Do We Dig Our Clients Out?*, NEW JERSEY FAMILY LAWYER, Vol. 36, No. 5 – April 2016
- Edward M. Callahan, Jr., 1 FIFTY ST. CONSTR. LIEN & BOND L., *New Jersey Construction Lien Law* § 31.02 (2016)
- John M. Cannel & Laura C. Tharney, *Children in Need Of Services: Toward A More Coherent Approach to Protecting New Jersey's Children and Families*, 40 SETON HALL LEGIS. J. 1 (2016)

- 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)
 - 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)
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- 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)

In addition to the items referenced above, the Commission was pleased to be favorably mentioned in an Op-Ed piece by Peter H. Lederman in the New Jersey Law Journal entitled *Spring Cleaning: It's time to Revamp New Jersey's Motor Vehicle Laws* (April 10, 2017), in another Op-Ed piece by Mahlon L. Fast, J.S.C. (Retired) in the New Jersey Law Journal entitled *It's Time To Revamp New Jersey's Landlord-Tenant Laws* (May 29, 2017), and in an article concerning archaic laws by Claude Brodesser-Akner in *The Star Ledger* (June 25, 2017).

3. – History and Purpose of the Commission



3. – History and Purpose of the Commission

New Jersey has a tradition of law revision. The first New Jersey Law Revision Commission, the first such commission in the nation, 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 154 Reports with the Legislature and one with the New Jersey Supreme Court. Fifty-five 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.*

THERE ARE CURRENTLY NINE STATE LAW REVISION COMMISSIONS IN THE UNITED STATES. NOT ALL OF THE COMMISSIONS ARE STAFFED, NOT ALL OPERATE IN THE SAME WAY...PRESENTLY, THE STATES WITH LAW REVISION COMMISSIONS ARE: CALIFORNIA, CONNECTICUT, LOUISIANA, MICHIGAN, NEW JERSEY, NEW YORK, OREGON, RHODE ISLAND, AND WASHINGTON.

Laura C. Tharney & Samuel M. Silver, *Legislation and Law Revision Commissions: One Option for the Management and Maintenance of Ever-Increasing Bodies of Statutory Law*, 41 SETON HALL LEGIS. J. 329, 342 (2017)

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

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

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

The meetings of the Commission are open to the public and the Commission actively solicits public comment on its projects, which are widely distributed to interested persons and groups.

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Alternative Procedure for Dispute Resolution Act (APDRA)

The Commission released a Final Report in October of 2017 that proposed codifying the Appellate Decision in *Citizens United Reciprocal Exch. v. N. NJ Orthopedic Specialists*, 445 N.J. Super. 371 (App. Div. 2016), in which the Court found that N.J.S. 2A:23A-13(a) did not address the time period a party has to commence a summary action after the denial of an application to modify an award under N.J.S. 2A:23A-12(d). The Court also noted that the present statute does not set forth the amount of time that a party has to challenge an award when the application to modify is made pursuant to the rules adopted by an arbitrating organization.

Relying upon the existing statutory language, and its purposes, the Court held that if an application to modify is filed under N.J.S. 2A:23A-12(d); or, an application to modify is made under the rules of a dispute organization, a party must file any summary action within 30 days after receipt of the order granting or denying the application. The Court reasoned that the goal of APDRA is the prompt and efficient resolution of disputes, and that dispute resolution should be subject to limited judicial review.

Hand-Held Devices

In March of 2017 the Commission issued a Final Report pertaining to the use of hand-held devices while operating a motor vehicle. The Office of the Attorney General, Division of Highway Traffic Safety, described distracted driving as a dangerous epidemic on New Jersey’s roadways (State of New Jersey, Office of the Attorney General, Division of Highway Traffic Safety, http://www.nj.gov/oag/hts/phone_down_overview.html (last visited March 2, 2017)). According to statistics available at the Division’s website, driver inattention has been a major contributing factor in nearly 800,000 motor vehicle crashes in the state from 2010 to 2014 – in 2014 alone, 3,179 were killed nationwide in distracted driving crashes.

N.J.S. 39:4-97.3 prohibits the use of a cell phone “by an operator of a moving motor vehicle on a public road or highway” unless the device is used hands-free. However, the statute specifically allows “the use of either hand to activate, deactivate, or initiate a function of the telephone.” A member of the public apprised the Commission of a concern that the statute’s language negatively impacts the ability of traffic officers to enforce the law.

After conducting preliminary research and outreach to interested parties, however, the Commission became aware of work in this area by Senator Richard J. Codey and Assemblyman John S. Wisniewski, to address the issue of cell phone use while temporarily stopped in traffic. Accordingly, the Commission concluded its work in this area by issuing a Final Report containing the results of Staff research, and offered its support to the Legislature regarding the provisions of Senate Bill No. 1773 and the identical Assembly Bill No. 4005, as they pertain to the issue of cell phone use.

Meaning of “Conviction”

The Commission released a Final Report in September 2017 pertaining to the meaning of the word “conviction” when it is used in statutes. This project was begun in response to an opinion of the Appellate Division, *In re J.S.*, 444 N.J. Super. 303 (App. Div. 2016), which considered whether it was most appropriate,

when calculating the time from a conviction, to treat the “conviction” as referring to a plea of guilty, or to the entry of a judgment of conviction.

There are 748 statutes that use the word “conviction”, some several times. The term “conviction” is not used fully consistently. However, in the majority of instances, the issue of when the conviction takes place is not relevant. The Commission does not propose to define what is meant by the word “conviction” in all situations and in all statutory uses. A “one size fits all” such as equating a conviction with a formal judgment of conviction definition would not work in every case. The Commission proposes a definition specifying only when the conviction occurred and only in situations when the time from conviction is a relevant issue.

The Commission recommended a provision structured as a definition to be added as subsection (s) to 2C:1-14 and the last sentence of the recommended language applies the provision to statutes outside of the criminal code.

Motorcycle License Plate Display

In June 2016, the Commission approved a project intended to review the language of N.J.S. 39:3-33, which requires automobile plates to be horizontally displayed on the rear of automobiles, but is less specific with respect to motorcycle plates. Based on comments received from the law enforcement community suggesting that the display of motorcycle license plates lacks uniformity throughout the State and, as a consequence, they are often difficult to see, the Commission proposed revisions to the statute and encouraged feedback from interested constituencies.

In a Final Report issued in December 2016, the Commission proposed adding new language to N.J.S. 39:3-33 mandating that motorcycle license plates be displayed along the same axis as printed by the Motor Vehicle Commission, which are now oriented horizontally. In response to additional comment received after the Final Report was released, the Commission issued a revised Final Report in January 2017 clarifying that to avoid any appearance of promoting or requiring a change in the generally horizontal axis of license plate holders and plates, ultimately decided on a proposed revision specifying horizontal display only.

“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)*

Subpoena v. Subpena

The Commission released a Final Report in October of 2017 that proposed unifying the spelling of the word subpoena throughout the New Jersey statutes. Presently, there are 345 New Jersey Statutes that utilize the traditional spelling of the word “subpoena” and 87 statutes that reference an alternate, phonetic, spelling of the word – “subpena.”

The inconsistent spelling of the “keyword” subpoena may lead to inaccurate search results for those without access to advanced search engines.

The Final Report recommends contains proposed language to unify the spelling of the word subpoena throughout the New Jersey statutes. The changes to the statutes constitute an administrative substitution of terms and are not designed to change the substance of the statutes.

Uniform Asset Preservation Orders Act

The Commission issued a Final Report in February 2017 that did not recommend enactment of the Uniform Asset Preservation Orders Act in New Jersey at this time. The Uniform Asset-Freezing Orders Act, promulgated by the ULC in 2012, authorized courts to issue an asset-freezing order to ensure that assets would be available to satisfy an existing or future judgment. That Act was later amended by the Uniform Law Commission (ULC) and renamed the Uniform Asset-Preservation Orders Act (UAPOA) to more accurately reflect the scope of the remedy and to prevent confusion.

The UAPOA replaces the term “freezing” with the term “preservation” throughout the body of the Act. Other changes highlight that the UAPOA was designed to apply only in actions where monetary damages are sought and would not ordinarily apply to consumer debt, family law, probate, trust, or estate matters. At the time the Commission released its Final Report, the UAPOA had not been enacted or introduced in any jurisdiction.

Asset-preservation orders are currently addressed in New Jersey by N.J.S. 2A:26-1 to -16. New Jersey case law cautions that a pre-judgment attachment must be considered an extraordinary remedy, only to be issued in circumstances in which there is a probability of success on the merits and the statutory criteria are satisfied.

During the course of its work in this area, the Commission considered whether the procedural mechanism contemplated by the Act conflicts with the power vested in the New Jersey Courts. Other concerns included the failure of the Act to define certain key terms, the potential need for a court to monitor the flow of a party’s assets throughout the course of litigation, and the position taken by the Civil Practice Division of the Administrative Office of the Courts that the harms sought to be remedied by the UAPOA are already addressed by existing statutes.

5. – Tentative Reports



5. – *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 arose 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, or certain other non-teaching school employees in voluntary transfer and promotion situations.

After releasing a Tentative Report in this area of the law, the Commission considered comments received and updated its work, authorizing the release of a Revised Tentative Report in July 2017 and seeking additional comment on the proposed 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. A Final Report is expected in early 2018.

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 (RCOA) to address the current "bifurcated" nature of the statute, which was enacted in 1968 and then modified in 2007. Although the result is a single statute, the component parts do not interact smoothly. Additional revision appears to be warranted to consolidate and make the interaction between the sections more coherent.

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

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

Due to legislative action in this area during the 2016-2017 legislative session, the Commission refrained from pursuing its work in this area, but anticipates renewing its work in 2018.

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.

"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)*

After analyzing the expungement law's legislative intent and history, as well as relevant rules of statutory construction, the New Jersey Supreme Court 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 found that D.J.B.'s juvenile adjudications did not

constitute "prior crimes" which would automatically prevent the expungement of his adult conviction.

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. Staff prepared a 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.

During the course of this project, the Commission has monitored the legislative activity and appellate decisions involving the statutes governing expungements. The Legislature crafted a trio of bills aimed at easing the process for expunging juvenile adjudications and adult convictions, and the Governor signed into law bills in this area. The Commission is reviewing this area of the law to identify additional modifications that may be appropriate, and anticipates delivering a Final Report in 2018.

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. Panthero'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.

An early Tentative Report proposed 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 conducted outreach and sought comment from interested stakeholders to prepare draft language in accord with the decision of the Supreme Court.

After considering the application of state and federal decisions discussing forum-selection clauses and arbitration provisions, the Commission determined to narrow the scope of the project concerning the FPA to the issues involving the gross sales threshold. Staff anticipates presenting a Final Report recommending revisions based on the New Jersey Supreme Court decision in *Tynan* to the Commission in early 2018.

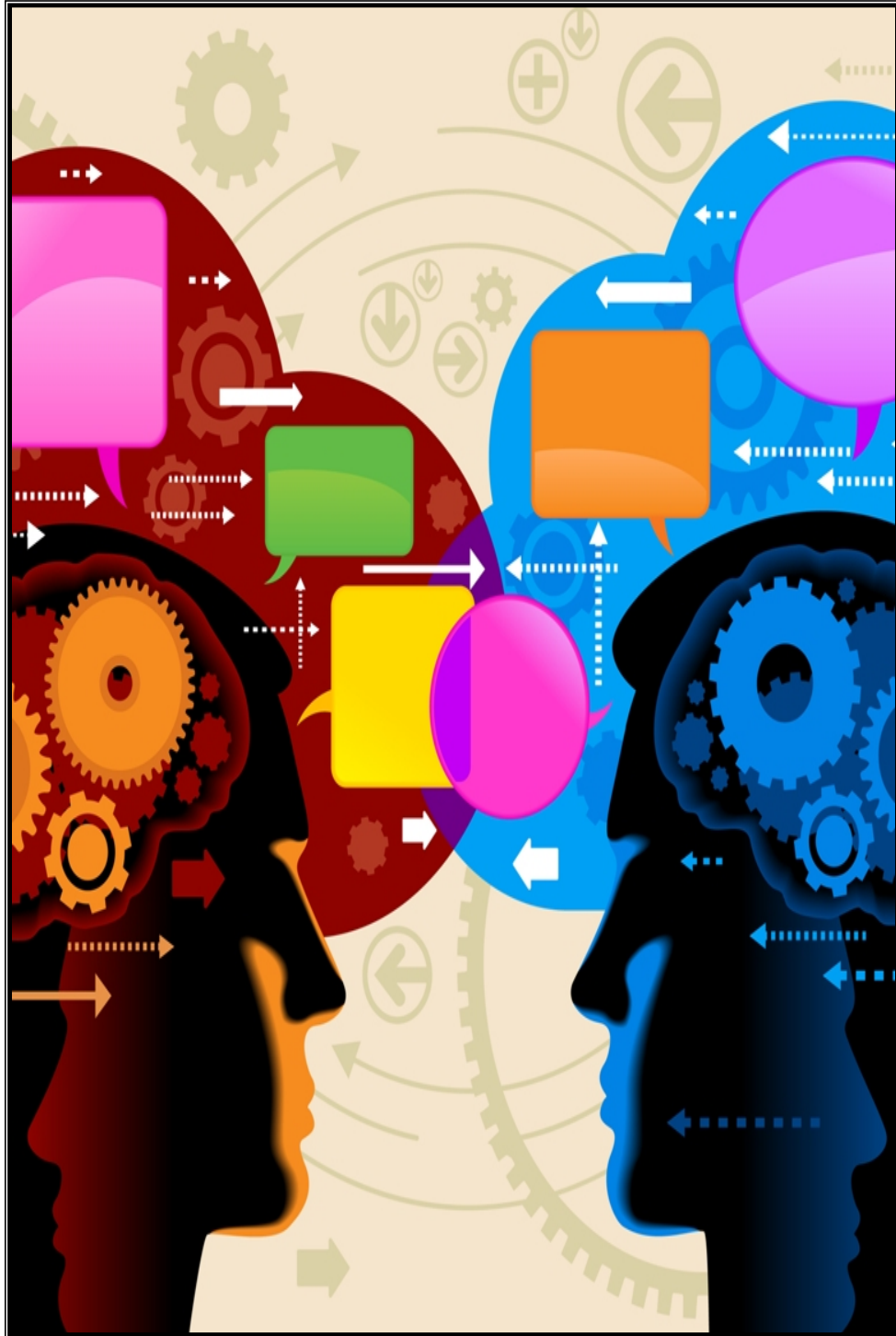
Partnership Trade Name Registration

Originally enacted to protect persons from extending “credit” to fictitious entities the New Jersey Partnership Trade Name statutes are no longer in step with the State’s view of corporate entities. Enacted in the early-20th century, N.J.S. 56:1-4 currently makes it a “misdemeanor” for a partnership to conduct or transact business in New Jersey if it has not filed the appropriate paperwork with the County Clerk’s Office.

Modifying N.J.S. 56:1-4 would serve three purposes. First, the amended language would prohibit non-compliant partnerships from becoming an LLP until they have properly registered their trade name. Next, the new language would permit a partnership to easily become an LLP by filing the required statutory trade name certificate with the County Clerk’s Office and thereafter refile a *statement of qualification* with the Division of Commercial Recording. Finally, the revised statute would honor the original intent of the statute by protecting the rights of partnership creditors.

With some modifications, the partnership trade name statute could be updated to reflect the State’s current view of business associations while preserving the original purpose of the statute. A Tentative Report was released in December of 2017. Staff is awaiting feedback on the proposed modification to the statute and anticipates delivering a Final Report in early 2018.

6. – Work in Progress



6. – Work in Progress

Accidental Disability

The Commission authorized a project to conduct further research regarding the “traumatic event” standard in the accidental disability pension statute, N.J.S. 43:16A-7, in light of the Court’s determination in *Moran v. Board of Trustees, Police and Firemen’s Retirement System*, 438 NJ Super. 346 (App. Div. 2014). Based on Staff’s preliminary research and the decision of the Court, the plain language meaning of the existing statute does not indicate whether a “traumatic event” is meant to reserve pensions for those who are injured through an unexpected event, or to preclude those with a pre-existing injury from collecting. Work is ongoing and a Report is anticipated in the summer of 2018.

Aggravated Manslaughter

The Commission authorized research to determine whether modifying the statutory requirements of the aggravated manslaughter statute, N.J.S. 2C:11-4(a), based on several judicial rulings which interpret the statute, will better clarify the “probability - possibility of death” distinction which arose as a result of the Court’s decision in *State v. Curtis*, 195 N.J. Super. 354 (App. Div. 1984).

Work on this project began in response to the case of *State v. Rose*, No. A-2696-12T4, 2014 WL 5312544 (App. Div. 2014), and is ongoing as Staff continues outreach to determine whether revision will clarify the statute, particularly for members of the public who are not familiar with the case law or New Jersey criminal practice.

Alimony Modification

The Commission began a project based on the Court’s determination in *Mueller v. Mueller*, 446 N.J. Super. 582 (Ch. Div. 2016), in which the Court considered an application to terminate alimony based on the applicant’s prospective retirement. The Court held that as the obligor submitted his application to terminate alimony five years before actually retiring, it was too far in advance of his anticipated retirement date. Although the recently-amended alimony statute permits an application for modification of alimony in advance of retirement, it does not prescribe a time period for filing such an application.

The Commission authorized Staff to conduct additional research and outreach in light of the issue identified in *Mueller* to determine if any modification to the statute could be of use in achieving predictable and consistent outcomes in the cases that arise moving forward since no other cases have addressed this specific issue with regard to the newly amended alimony statute.

Ante-mortem Probate

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 a Tentative Report after obtaining feedback from knowledgeable parties.

Consumer Fraud Act

The Commission began work on a project relating to New Jersey’s Consumer Fraud Act (CFA) several years ago. 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, some of which contains ambiguities and redundancies.

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.

“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)*

Definition of “Marital Status” in Law Against Discrimination

The Law Against Discrimination, found at N.J.S. 10:5 et seq. (“LAD”) in New Jersey prohibits an employer from imposing conditions of employment that are not related to the tasks assigned to, and expected of, an employee. It also prohibits employers from resorting to stereotypes to discipline, block from advancement, or terminate an employee due to life decisions, such as marital status. In *Smith v. Millville Rescue Squad*, 225 N.J. 373 (2016), the Supreme Court of New Jersey decided that while the term “marital status” is not defined in the LAD, its inclusion in the statute and its use in previous cases point to it meaning one’s status as either “single, married, or transitioning from one to another.” In doing so, the Court noted that marital status as a term is not defined in the LAD, and that there is no legislative history to clarify the boundaries of the term. The Court identified examples of states with “marital status” in the anti-discrimination laws that also define what the term marital status means.

The Commission authorized Staff to engage in outreach to various stakeholders before determining whether Commission work in this area should continue.

Definition of “Material” in Insurance Fraud Statute

The Commission authorized research and outreach to define the term “material” under the current insurance fraud statute, N.J.S. 2C:21-4.6 after a review a review of *State v. Goodwin*, 224 N.J. 102 (2016). In that case, the Supreme Court analyzed the statute to determine if a defendant may be found guilty of insurance fraud if there was no an actual inducement to pay a claim. The Court determined that the statute contained no requirement that criminal liability depend on an insurance company relying on the false statement and suffering a loss; instead it requires only a knowing submission of a false or fraudulent statement of material fact.

The Court also considered the definition of the term “material” which is not defined in 2C:21-4.6. The Court found that a constricted interpretation of “material fact” was inconsistent with the statute’s legislative intent and that allowing fraud to go unpunished due to a carrier’s thorough investigation resulting in the uncovering of false statements is not the intent of the statute.

As a criminal statute, the insurance fraud provision will benefit from clarity. The Commission authorized Staff to conduct additional research and outreach, determine whether including a definition of “material” would be of assistance in the current insurance fraud statute. A Tentative Report is anticipated in 2018.

Definition of “Residence” for Sex Offenders

The Commission authorized initial research and outreach in the area of definition of “residence” for sex offenders in New Jersey in response to the Court’s decision in *State v. Halloran*, 446 N.J. Super. 381 (Law Div. 2014). In *Halloran*, an offender was arrested and charged with Failing to Notify Law Enforcement of a Change in Residence after staying in a location not registered as his residence “nine to twelve nights out of forty-two between August 22, 2011, and October 3, 2011.” Defendant moved to dismiss prosecution as a *de minimis* infraction. The Superior Court held that defendant’s failure to register his secondary residence was not a *de minimis* infraction. The issue of whether sex offenders subject to Megan’s Law registration requirements who reside in multiple locations are required to register each address where they reside was identified as an issue of first impression in New Jersey.

Staff is engaging in research and outreach in order to determine if it would be appropriate to clarify the meaning of “residence” in N.J.S.A. 2C:7-2 and a Tentative Report is anticipated in 2018.

Driving after Suspension but Before Reinstatement

The Commission began work on a project arising from the New Jersey Appellate Division’s opinion in *State v. Torella*, 2015 WL 11391309 (App. Div. 2016). In *Torella*, the Defendant had been previously convicted of a series of DWI offenses that led to a suspension of his license. After the suspension period ended, he was arrested twice for driving with a suspended license and charged with a violation of N.J.S. 2C40-26(b).

The Appellate Division in *State v. Torrella* relying upon the holding in *State v. Perry*, 439 N.J. Super. 514 (App. Div.), *certif. den.*, 222 N.J. 306 (2015), explained that “[t]he statute is silent as to those driving

without reinstatement beyond the court-imposed term of suspension” and that “[h]ad the Legislature intended to include those persons, the necessary language could have easily been included in both sections of the law.” The Court went on to hold that the statute does not criminalize the defendant’s conduct. In addition, the Court determined that finding otherwise “would [...] engraft additional terms onto the statute that the Legislature did not intend to include and to expand the list of potential prosecutions beyond the scope of the plain language.”

This subject presents a situation in which outreach to various stakeholders and research did not lead to a uniform consensus on this issue and Staff is working to redraft the provision of the law and circulate it as a Tentative Report in early 2018.

Driving While Intoxicated – Out-of-State Convictions

The Commission requested that Staff conduct additional research and outreach regarding whether a conviction for driving while intoxicated (DWI) in another state qualifies as a predicate conviction that can support an in-state conviction for driving during a second license suspension for DWI. Work in this area was initiated in response to *State v. Luzhak*, 445 N.J. Super. 241 (App. Div. 2016).

In that case, the Appellate Division determined that defendant was subject to indictment pursuant to N.J.S. 2C:40–26(b) based upon two prior DWI convictions, notwithstanding that one conviction was in Maryland. Pursuant to N.J.S. 39:4–50(a)(3) and N.J.S. 39:5D–4(a)(2), and consistent with the clear intent of the Legislature, the Court held that defendant’s conviction in Maryland qualified as a DWI in New Jersey. Work on this project is ongoing as Staff continues its review of this area of the law in order to determine if modifying N.J.S. 2C:40–26(b) to include DWI convictions in foreign states would improve the clarity of the law.

Filial Responsibility Statutes

The Commission revisited a project previously presented by the Office of the Ombudsman for the Institutionalized Elderly and reviewed N.J.S. 44:4-100 to 44:4-103 and N.J.S. 44:1-139 to 44:1-142, that make certain relatives responsible for payments made under old welfare laws. Although none of these statutes had been applied for more than 30 years, there was concern that their continued inclusion in the body of statutes might cause confusion as they had in other states. The Commission decided that these anachronistic statutes would be recommended for deletion when the Report on the Public Assistance Laws was released.

Frivolous Litigation

In 2017, the Commission considered an editorial published in the New Jersey Law Journal entitled, “Clarify Frivolous Litigation Rule’s Applicability to Appeals.” The statute to which the article referred, New Jersey’s Frivolous Litigation Statute, *N.J.S. 2A:15-59 et seq.*, was enacted to protect parties from baseless litigation.

The statute permits a court to award litigation costs and reasonable attorney fees to the prevailing party when they have met certain conditions precedent. As currently drafted, the statute applies only to complaints, counterclaims, cross-claims, or defenses that have been filed in an action and that the court has found to be frivolous in nature. To be considered frivolous, one of the enumerated pleading must have been filed in “bad faith, solely for the purpose of harassment, delay or malicious injury.” The New Jersey Supreme Court, which has exclusive jurisdiction to regulate attorneys, has refused to apply this statute to anyone other than non-lawyer parties.

There is presently no statute in New Jersey that addresses frivolous litigation in appellate matters. Work on this project is ongoing as Staff reaches out to interested parties to determine whether such a statute would be of assistance in addressing appellate filings.

Managerial Executives

The Commission authorized preliminary research and outreach regarding 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).

Pursuant to 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” to include only personnel at or above the level of assistant commissioner.

“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)*

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 2018.

Mandatory Sentencing

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, 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.

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 v. New Jersey*, which involved a New Jersey statute, subsequently amended as P.L.2001, c. 443, that increased the maximum term of imprisonment from 10 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. Staff is conducting research to identify areas within the statutes which could be impacted by the decisions in *Alleyne* and *Apprendi*. A Tentative Report is anticipated for 2018.

Misdemeanor and High Misdemeanor

The Commission authorized research and outreach concerning the presence of the terms “misdemeanor” and “high misdemeanor” in the New Jersey Statutes. The 271 statutory references to the term “misdemeanor” span 41 titles and 1 appendix. There are also 36 references to the term “high misdemeanor” across 18 New Jersey statutory titles.

The classification of an offense, for sentencing purposes, as a misdemeanor or a high misdemeanor is anachronistic. These terms are held over from a time prior to the codification of the New Jersey Criminal Code. Work on this project is ongoing as Staff conducts research in an effort to draft statutory language that effectuates the intent of the Legislature while modernizing the statutes and making sure that they are consistent.

Model Entity Transactions Act (META)

The Commission authorized research and outreach concerning the Model Entity Transaction Act (META). Completed by the Uniform Law Commission in 2007, then amended in 2011 and 2013, META provides a common set of provisions applicable to all transactions involving all forms of business associations. META permits: the conversion of one kind of business organization to another; the merger of two or more business organizations into one organization; an interest exchange between two entities so that one of them is controlled by the other without actually merging the two entities; and, the domestication of an entity originally organized in another state.

To complete each kind of transaction, a plan must be approved by the interest holders of each participating entity, though the requirements of the plan itself and the approval process differ based on the type of entity and transaction. While there are areas in which META and current New Jersey law overlap, there are also various dissimilarities between META and the existing New Jersey law, with many of them being small technical differences.

Eight states have adopted META to this time. Staff is in the process of reviewing the New Jersey statutes governing corporations with a goal of identifying modifications that would be useful; or, whether the model language of META could replace New Jersey’s existing statutory language.

Nonprofit Organizations

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 an inquiry by a member of the public who contacted the Commission to express concern that the Nonprofit Act had not been revised to reflect the realities of modern corporate governance.

The Legislature enacted Title 15A in 1983 on 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 and comparing it to 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.

Obstructing Highways and Other Public Passages

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

The applicable subsection of N.J.S. 2C:33-7 is silent as to the *mens rea* required for this offense. 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. Both parties relied on 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." 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 clarified that the gap-filler culpability established in 2C:2-2c(3) applies only to crimes and cannot be read into disorderly person offenses. Staff anticipates preparing a Draft Tentative Report for consideration in early 2018.

"Physical Examination" and Public Entity Immunity

The Commission authorized a project to clarify the definition of "physical examination" under the New Jersey Tort Claims Act, based on the New Jersey Supreme Court decision in *Parsons ex rel. Parsons v. Mullica Tp. Bd. Of Educ*, 226 N.J. 297, 299 (2016). In *Parsons*, the Court considered whether N.J.S. 59:6-4 immunizes public entities and their employees for failure to report the results of a preventative public health examination. The parents of the plaintiff alleged that the school district failed to timely notify them of the results of their child's visual acuity test pursuant to N.J.A.C. 6A:16-2.2(l)(6). The school district asserted immunity to the claims under the TCA.

The Court considered the legislative history of N.J.S. 59:6-4 to determine whether visual acuity tests fall under the definition of “physical examination”, and inferred that it was the legislative intent that visual acuity tests fall within the definition of “physical examination” pursuant to N.J.S. 59:6-4. The Court also turned to sources outside of the statutory language to determine whether an “adequate physical examination” included the communication of results to either the patient or the patient’s guardians because “[t]he TCA does not expressly define a ‘physical examination’ or its components.” Work on this project is ongoing.

Prerequisites for Recording

In early 2016, a member of the public contacted the Law Revision Commission to propose a project regarding a minor structural change to N.J.S. 46:26A-3, which details the requirements for recording deeds and other instruments. The member of the public suggested that the emphasized “subdivision” language contained in subsection (d) of the enacted law was a potential typesetting error.

It appears that upon adding the two additional requirements to state the name of the person preparing the deed and the mailing address of the grantee, the subdivision language was separated from where it originally resided in subsection (b) and retained at the end of subsection (d). As the Commission had included the “subdivision” language in subsection (b) when initially recommending the enacted mortgage recording statute, the Commission instructed Staff to contact the appropriate Legislator for possible modification.

Property Liability Insurance Guaranty Association Act (PLIGAA)

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 2018.

“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)*

Property Tax

The Commission authorized the re-establishment of a project to revise provisions on the assessment of Property Tax. The Commission originally began this project in 1997 at the suggestion of Lawrence Lasser who

had recently retired as Chief Judge of the Tax Court. He argued that the current law was not well organized or expressed. In addition, some of the statutes contain language not in accord with court decisions or settled practice. Judge Lasser's role was critical and, with his death in 1998, the project was suspended.

This project will be based on the drafts of eight chapters comprising the first two articles of the law that were produced in 1998. This material sets out what property is taxable and how it is to be assessed. With the old draft as a starting point, this is not a small project. It will be necessary to bring the 1998 draft up to date. There have been some statutory changes and many judicial decisions since 1998. It will also be necessary to find experts to review drafts. Work is ongoing.

Public Assistance Law (Title 44)

In 2016, the Commission began a project to update an earlier report calling for the total revision of Title 44 of the statutes, the Poor Law, into a new Public Assistance law.

Many of the statutes in the earlier chapters of Title 44 (The Poor Law) were enacted in the nineteenth century. Others date from the 1920's and before. They are archaic, in substance and in style, and do not reflect current reality and practice. There are many repealed, superseded or unconstitutional sections. It appears that as times and welfare programs changed, very little of the old law was repealed. Thus, when categorical relief was established in the 1930's, new chapters were added but the old statutes on indoor and outdoor relief were left in place. When poverty programs were established in the 1960's, more material was added. With welfare reform in the 1990's, more was added, but very little was repealed or amended to bring it up to date. The result is that most of Title 44 completely anachronistic.

The modern parts of Title 44 also need revision. Two main laws with confusingly similar names govern assistance to the needy in New Jersey. One, the "Work First New Jersey" act, N.J.S. 44:10-55 et seq., L. 1997, replaced earlier programs including: aid to families with dependent children, general assistance, emergency assistance for recipients, and the Family Development Initiative. The Work First New Jersey General Assistance Act, N.J.S. 44:8-107 et seq., L. 1997, the second main law, replaced the State's General Assistance law of 1947. The relationship between the two "Work First" laws is obfuscated by their statutory language.

The Commission has completed most of its work on this project and is now engaged in discussions with agencies that administer the Public Assistance programs to assure that the Report will reflect current practice accurately. A Tentative Report is expected early in 2018.

Public Health – Definitions

In reviewing Title 26 Health and Vital Statistics it was determined that there were two potentially duplicative definition sections. A preliminary examination revealed that both sections, N.J.S. 26:1-1 and 26:1A-1, define the same terms, and do so with similar wording. As a result, the two statutory sections are nearly indistinguishable, and might benefit from consolidation. The Commission authorized this modest project to determine whether the sections could be consolidated and a Final Report is expected in early 2018.

Public Health and Safety – Seatbelt Usage

As a result of the New Jersey Supreme Court's decision in *State v. Lenihan*, 219 N.J. 251 (2014), the Commission began a project concerning N.J.S. 2C:40-18, which establishes degrees of criminal responsibility 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.

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, hitting a guardrail. Neither the defendant nor her passenger was wearing a seat belt as required by N.J.S. 39:3-76.2f. The passenger died as a result of the injuries she sustained and defendant was charged and found guilty of a third degree crime pursuant to N.J.S. 2C:40-18.

Defendant appealed 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”; (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. The New Jersey Supreme Court affirmed the defendant's conviction.

Preliminary examination of the legislative history and contemporaneous news articles indicated that the intent of N.J.S. 2C:40-18 was likely to focus on violations of New Jersey building codes by night clubs and similar establishments. Expansion of the scope of N.J.S. 2C:40-18 to include statutes such as N.J.S. 39:3-76.2f as predicate offenses may exceed the expectations of the Legislature. Work is ongoing, and expected to conclude in 2018.

Rent Security Deposit Act

The Commission authorized work on a project to determine whether modifying N.J.S. 46:8-19 et seq. to clarify the status of forum selection clauses would aid in interpreting the law and potentially eliminate the need for additional litigation regarding the propriety of forum selection clauses that allow a landlord to lock a tenant into litigation in a county of the landlord's choice under the terms of their lease agreements as a result of the Court's decision in *Baker v. La Pierre, Inc.* 2016 N.J. Super. Unpub. LEXIS 472 (App. Div. 2016).

Baker examined whether a landlord could use a forum selection clause in a rental contract to force a tenant to pursue legal action regarding the return of a security deposit in a county chosen by the landlord. The statutory section provides limited guidance on the matter, stating only that such matters are handled either by the Small Claims or Special Civil divisions of the Superior Court. The Court determined that “where a residential tenancy was created by an adhesion contract, and the tenant has filed the action for return of a security deposit, in accordance with Rule 6:1-3, in the county where the rental property is located, a forum-selection clause requiring venue be laid in another county is against established legislative policy.” A Tentative Report is anticipated for 2018.

Revised Uniform Athlete Agents Act

The Commission authorized research and outreach on the Uniform Athlete Agents Act (2000) drafted by the Uniform Law Commission. The New Jersey Legislature considered the UAAA from the 2006-2007 Legislative sessions through the 2012-2013 Legislative sessions, ultimately declining to advance the bill.

Subsequently, the UAAA was revised in 2015. The UAAA and RUAAA propose to regulate the conduct of students and agents as that conduct relates to universities and the NCAA. Staff is conducting research and outreach to determine whether adoption of the RUAAA in New Jersey appears to be appropriate, and a Final Report is anticipated in early 2018.

Revised Uniform Unclaimed Property Act

The Commission has begun a review of the Revised Uniform Unclaimed Property Act approved by the Uniform Law Commission in 2016 and enacted in four states. The Commission expects to give particular consideration to substantive differences between the new act and the older Uniform Unclaimed Property Act now in force in New Jersey. A Report on the Revised Act is expected in 2018.

Sidewalk Tort Liability

The Commission authorized a project to determine whether statutory revisions will best address issues concerning the liability of property owners for injuries sustained on the abutting sidewalks of properties with hybrid forms of ownership or mixed use properties. The common law rule had been that commercial property owners had no duty to maintain abutting sidewalks. In 1981, the New Jersey Supreme Court established a distinction between the duty of commercial and residential property owners to maintain abutting sidewalks. The Court held that commercial property owners are liable for injuries on the sidewalks abutting their property when the injury results from the owner's negligent failure to maintain the sidewalks.

"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)*

Cases involving properties with a hybrid form of ownership emerged over the three decades following the New Jersey Supreme Court decision. The Appellate Division called on the Supreme Court or the Legislature to clarify this "gray area" of properties which may be classified as commercial properties, residential properties, or both. Work on this project is ongoing as Staff reaches out to stakeholders, and endeavors to determine if creating a statutory provision in this area of law will address the ambiguities identified by the courts when considering hybrid forms of ownership and mixed use properties.

Spill Compensation and Control Act

The Commission requested that Staff engage in additional research and outreach regarding the Spill Compensation and Control Act as a result of the case of *Magic Petroleum v. Exxon Mobile Corp.*, 218 N.J. 390 (2014).

In *Magic Petroleum*, the New Jersey Supreme Court addressed two issues that identified areas of the law in which statutory drafting might be able to provide clarity. Those are: (1) whether claims for contribution under the Spill Act must be deferred under the doctrine of Primary Jurisdiction until a final resolution by the Department of Environmental Protection; and (2) whether it is necessary to obtain written consent of the Department of Environmental Protection before proceeding with a contribution claim. This area of the law is highly specialized and Staff is engaging in outreach and a review of the role of administrative law in this area before proposing any statutory revisions.

Tort Claims Act - Notifications

The Commission authorized work on a project to determine whether the Tort Claims Act (TCA) should be modified to clarify that bystander liability claims must comply with the notice requirements of the TCA as a result of the Court's decision in *Alberts v. Gaeckler*, 446 N.J. Super. 551 (Law Div. 2014).

In *Alberts*, a bicyclist brought a negligence action against the county, alleging that bike path was in dangerous condition at time she fell from her bicycle. She then amended her complaint to allege a bystander liability claim on behalf of her husband. The county moved to dismiss the husband's bystander liability claim. The Superior Court held, as a matter of first impression, that the husband's bystander liability claim for negligent infliction of emotional distress was not derivative of bicyclist's personal injury claim and therefore the filing of a separate tort claim notice was required for husband's claim. The Court further determined that the amended complaint filed by the bicyclist to assert a bystander liability claim did not relate back to date of filing of the bicyclist's original complaint, and therefore the bicyclist's husband's bystander liability claim was time barred.

Staff is engaging in additional research and outreach in an effort to determine whether statutory drafting could be of assistance in clarifying the distinction between *per quod* and bystander liability claims, and a Tentative Report is anticipated in 2018.

Unclaimed Real Property

The Commission approved a project concerning unclaimed real property. The expectation is that this work will produce a draft statute that would treat unclaimed real estate as much like other unclaimed property as possible, meaning that it should be sold and the proceeds put into the unclaimed property fund awaiting a claimant. Current law provides only for the escheat of real estate. Escheated property becomes the property of the State, and a later claimant has no right to it. The more modern approach of the Uniform Unclaimed Property Act gives control of property to the State but preserves a claimant's eventual rights. However, the Uniform Act does not cover realty.

This project will reconsider issues concerning unclaimed real estate and draft a statutory provision that could stand alone or be part of an anticipated Report on the newly revised Uniform Unclaimed Property Act. The Commission has not yet approved a report on Unclaimed Real Property because the Commission is concurrently considering the Revised Uniform Unclaimed Property Act. The Commission intends to make its recommendation as to unclaimed real property part of the report on the Revised Uniform Unclaimed Property Act.

Unemployment Insurance Benefits

The Commission authorized a project based on the Court's determination in *Anderson v. Board of Review, Dept. of Labor and Workforce Development*, No. A-1353-14T3, 2016 WL 4446160 (App. Div. 2016), in which the Appellate Division considered whether an employee who held two jobs with a single entity may avail himself of unemployment benefits if he resigns from one of his positions and is then fired from the other. The Court determined that an employee in such a situation may claim unemployment benefits, as the resignation from the first position has no bearing on the firing from the second position.

Two challenges posed by the case in question were that: (1) although the regulations address a situation in which the individual is employed by two employers, in this case, there was only one employer; and (2) the Court disagreed with the position taken by the Board of Review that the employee's second employment had to be full-time in order to qualify for benefits. The Commission authorized limited outreach in order to determine if statutory drafting could assist in the resolution of the issues addressed in *Anderson*.

Uniform Act on Prevention of and Remedies for Human Trafficking

When the Commission initially began considering work in this area, the Rutgers School of Law – Newark's International Human Rights Clinic submitted a Memorandum identifying some potential ways in which New Jersey's stringent anti-human trafficking laws could be strengthened. The 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 June 2016, the Commission released a Final Report recommending that forced sexually explicit performances be specifically included as a prohibited human trafficking crime and Staff continues to work in conjunction with the Human Trafficking Commission to monitor and evaluate legislative efforts to combat human trafficking in New Jersey and to identify areas in which additional statutory drafting could be of assistance.

Uniform Probate Code

The Commission began work on a project to consider the possible enactment of the Uniform Probate Code (UPC) in New Jersey. New Jersey's probate law, Title 3B, is modeled on the 1969 version of the UPC and was revised in 1990 to reflect subsequent amendments. Although New Jersey has not yet enacted the most recent amendments to the UPC, 17 states and the U.S. Virgin Islands have done so.

The Commission compared corresponding sections of the UPC and Title 3B of the New Jersey statutes to identify substantive differences and those provisions which could benefit from revision or adoption. The Commission found numerous areas meriting further research, such as the UPC section explicitly abolishing dower and curtesy, which relate to a surviving spouse's right to receive a set portion of the deceased spouse's estate, and which concept New Jersey still retains, even though most states have abolished it. Another area of the UPC under consideration relates to the concept of a notarized will, which, if adopted in New Jersey, would eliminate the requirement for witnesses at the time a will is signed by the testator. A Tentative Report is expected in 2018.

7. – No Action Recommended



7. – *No Action Recommended*

Affidavit of Merit

The Commission considered, in April 2016, an article from a legal publication concerning the issues raised by a federal district court judge who called on the New Jersey Legislature to amend the Affidavit of Merit (AOM) statute.

Subsequently, a bill was introduced to update the requirements contained within the AOM statute. The Commission was afforded an opportunity to provide feedback on the proposed amendments. The Commission carefully considered the legislative history and the case law pertaining to the New Jersey statutes governing affidavits of merit, specifically N.J.S. 2A:53A-27, dating back to the 1995 tort reform bills, and researched state and federal case law, along with the affidavit of merit statutes in other jurisdictions. The results of this research and proposed revisions to the proposed statutory language were provided to the sponsor of the bill for consideration.

Driving While Intoxicated

In July 2016, the Commission requested that Staff conduct research and outreach regarding whether a conviction for driving while intoxicated (DWI) in another state qualifies as a predicate conviction that can support an in-state conviction for driving during a second license suspension for DWI. Work in this area was initiated in response to *State v. Luzhak*, 445 N.J. Super. 241 (App. Div. 2016).

In that case, the Appellate Division determined that defendant was subject to indictment pursuant to N.J.S. 2C:40–26(b) based upon two prior DWI convictions, notwithstanding that one conviction was in Maryland. Pursuant to N.J.S. 39:4–50(a)(3) and N.J.S. 39:5D– 4(a)(2), and consistent with the clear intent of the Legislature, the Court held that defendant's conviction in Maryland qualified as a DWI in New Jersey. Senator Bateman introduced S175, which addressed this issue by clarifying that, for sentencing purposes, out of state convictions for DWI are counted as previous DWI convictions against drunk driving offenders who drive with suspended driver's license in New Jersey, provided that the laws of the out-of-state jurisdiction are “substantially similar” to those of New Jersey. The Commission concluded its work in this area as a result.

“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)*

Gap-Time Credit

In *State v. Walters*, 445 N.J. Super. 596, 598 (App. Div. 2016) the Appellate Division addressed the issue of whether a defendant may receive gap-time credits for a sentence of imprisonment imposed after a Title 39 motor vehicle violation.” Generally, if a defendant is given two separate sentences on two different dates, the time spent in custody for the first sentence is added as a “gap-time credit” toward the second sentence pursuant to N.J.S. 2C:44-5. However, the statutory language does not explicitly address whether or not this provision applies only to “offense[s]” under the Criminal Code, or if it extends to other offenses such as

offenses under the Juvenile Code or under Title 39. Ultimately, the Court determined that gap-time credits apply to offenses outside of New Jersey's Criminal Code.

In light of the bill pending before the Legislature dealing with this issue, which seemed as though it would significantly limit the application of gap-time credit, the Commission determined that it would be appropriate to await further action by the Legislature in this area.

Pre-Trial Intervention – Admission and Denial

The Appellate Division in *State v. Austin*, No. A-1046-14T3, 2016 WL 3004807, at *2 (App. Div. 2016), found that the term “supervisory treatment” included in N.J.S. 2C:43-12(g)(1) refers only to diversionary programs within the state and not to diversionary programs operating under the laws of other states. Accordingly, the Court held that the prosecutor's reliance on previously dismissed or diverted charges from another state to deny defendant's admission into PTI in New Jersey amounted to an abuse of discretion.

New Jersey's PTI admission criteria statute does not expressly prohibit a prosecutor from excluding a defendant from admission into PTI solely on the basis of past participation in a diversionary program under the laws of another state. The Appellate Division in *State v. Austin* held that Prosecutors may use evidence of past participation in diversionary programs as a factor in determining whether a defendant has exhibited a pattern of anti-social behavior but may not use that fact, standing alone, to deny entry into PTI.

After considering the issue, the Commission determined that it did not appear that Commission work in this area of the law was warranted at this time.

Uniform Common Interest Ownership Act – Management and Elections

In November 2016, the Commission approved a project continuing the effort to codify the law relating to common interest communities including condominiums, cooperatives and planned unit developments. This phase of the project was to cover management of the communities and voting by unit owners both on substantive matters and in elections of executive boards. After work on this project was begun, a S2492 was introduced in the Legislature relating to these issues. It was enacted as L.1917, c.106. As a result, the Commission's work in this area was suspended.

8. – Members and Staff of the NJLRC in 2017



8. – Members and Staff of the NJLRC in 2017**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.



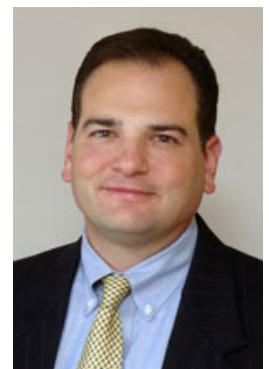
Anthony R. Suarez, Attorney-at-Law (*Appointed as Commissioner in July 2014*)



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.

Michael T. Cahill, Co-Dean, Rutgers School of Law - Camden, Ex officio

Michael Cahill joined the law school as Co-Dean and Professor of Law in 2016. Before that, he was a tenured faculty member at Brooklyn Law School, where he also served as associate dean for academic affairs (2010–13) and as vice dean (2013–15).

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**, Co-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.

Kathleen M. Boozang, Dean, Seton Hall University School of Law, Ex officio

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**

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

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.

Timothy J. Prol, Counsel

Timothy Prol joined the Commission as a staff attorney in July of 2017. Tim has been a licensed attorney since 2014 and is admitted to practice in New Jersey and Pennsylvania. Prior to joining the Commission, Tim was the Director of Operations for the New Jersey Primary Care Association, where he also served as the organization's Compliance Officer. He served as judicial law clerk for the Honorable Steven F. Nemeth of the Ocean County Superior Court. Tim is a graduate of Rutgers School of Law and was a Rutgers Eagleton Institute of Politics Raimondo Legislative Fellow with the New Jersey Assembly Majority Office. He is a graduate of Kean University. Prior to attending law school, Tim served as Director of Policy and Planning for New Jersey State Senator Nicholas P. Scutari.

Samuel M. Silver, Counsel

Samuel Silver joined the Commission as a staff attorney in March of 2017. He has been a licensed attorney since 1994 and is admitted to practice in New Jersey. As a solo practitioner, Sam engaged in civil and criminal litigation as well as appellate practice. Sam litigated matters before the Superior Court, Law Division, and Municipal Courts throughout New Jersey. In addition, he argued appellate matters before both the Appellate Division and the Supreme Court of New Jersey. Sam also practiced before the United States District Court. Prior to attending law school, he earned a degree in Political Science from the University of Wisconsin's Madison Campus. Sam graduated from the Washington College of Law – American University in 1994. In 2016, he earned a Master's Degree in trial advocacy from Stetson University College of Law.

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.

Jayne J. Johnson, Counsel (until October of 2017)

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 (until April of 2017)

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 (until January of 2017)

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.

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 2017 are:

Adrian Altunkara, Seton Hall University School of Law, Legislative Law Clerk – Spring 2017

Brian J. Ashnault, Seton Hall University School of Law, Legislative Law Clerk – Summer 2016-Spring 2017

Jon H. Aunio, Seton Hall University School of Law, Legislative Law Clerk – Summer 2016-Spring 2017

Kiersten A. Fowler, Seton Hall University School of Law, Legislative Law Clerk – Summer 2017-Fall 2017

Lauren B. Jones, Seton Hall University School of Law, Legislative Law Clerk – Summer 2016-Spring 2017

Mark J. Leszczyszak, Seton Hall University School of Law, Legislative Law Clerk – 2014-2016

Erik A. Topp, Seton Hall University School of Law, Legislative Law Clerk – Summer 2017-Spring 2018

Renee Wilson, Seton Hall University School of Law, Legislative Law Clerk – Fall 2017-Spring 2018

Christian Weisenbacher, Rutgers School of Law – Camden, Legislative Law Clerk – Summer 2017 – Fall 2017

During the Spring semester of 2017, research and drafting assistance was provided to the NJLRC by pre-law student externs Micaela Itona and Beshoy Shokralla through a cooperative relationship with the New Jersey Institute of Technology, Elizabeth Petrick, Assistant Professor, Federated History Department, and Alison Lefkovitz, Assistant Professor and Director of NJIT's Law, Technology & Culture program. Hemani Marfatia, a high school student with an interest in a pre-law course of study, also completed a two-week internship with the Commission during the summer of 2017.

In addition, pro bono legal research and drafting assistance was provided to the NJLRC by law students Carly Campoli, Erin Donegan, Ashley Keavney, and Santwana Mandalika, of the Rutgers School of Law –

Camden in cooperation with Professor Jill Friedman and Professor Sarah Ricks and Camden's Pro Bono Research Project, and by law student Lindsey Farina in cooperation with Lori Borgen, Esq., Associate Director of the Center for Social Justice, at Seton Hall University School of Law.

In 2017 the Commission also created a new Fellowship position at the NJLRC. Modeled on judicial clerkships, the Commission Fellowship is available to a law school graduate who will work for the Commission on a full-time basis for a year after graduation. After outreach to, and responses from, New Jersey's three law school campuses, a Fellow was selected who will begin working with the Commission in the summer of 2018.

9. – Looking Ahead to the Work of the NJLRC in 2018



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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. A website upgrade is anticipated for 2018, and that should improve access to the Commission's current and historic work.

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. Commission Staff always appreciates the opportunity to cooperate with Staff members from the Office of Legislative Services, who have deep experience and expertise in various subject-matter areas, and with the Staff members in the Legislative Partisan Offices.

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, as we begin a new legislative session, to increased interaction with Legislators in order to better support the Legislature and to facilitate the implementation of Commission recommendations.
