

To: New Jersey Law Revision Commission
From: Susan G. Thatcher
Re: Uniform Electronic Legal Material Act (“UELMA”)
Date: March 7, 2016

MEMORANDUM

The attached Revised Draft Tentative Report (“DTR”) incorporates modifications requested by the Commission at the February 18, 2016 meeting, including the following:

- The joint resolutions and proclamations of the Governor previously referenced in subsection c.(4) of Section 2 have been separated into independent subsections with corresponding changes to subsection d.
- The Commission expressed reservations about the legal material being “presumed official” in Section 5, so this Section has been modified to deem all of the published legal material official. For the Commission’s review, the presumption of accuracy of Section 6 is unchanged as it is rebuttable and seems necessary when various formats of “official” legal materials are in circulation.
- References to the Appellate Division and Court Rules in Section 9 have been deleted.
- This draft restores the title “Uniform Electronic Legal Material Act.” The Commission had a preliminary discussion regarding whether the original text of UELMA is so substantially altered that it can no longer be designated as uniform. In past instances, the Commission has recommended acts that largely reflect the intent and purposes of a Uniform Act, but have been modified to address New Jersey-specific issues or comport with New Jersey laws or practices. In light of the state specific modifications, on some occasions these recommended have been titled as the New Jersey version of the Uniform Law Commission’s Act (e.g., New Jersey Emergency Volunteer Health Practitioners Act, New Jersey Family Collaborative Law Act). For the Commission’s further consideration as to how this act should best be titled, below is a summary of some areas in which the statutory text proposed in the DTR modifies UELMA.
 - The DTR incorporates references to New Jersey’s existing publication mandates.
 - The DTR applies to existing electronic legal material, while UELMA only applies to materials published on or after the effective date.
 - The DTR dispenses with UELMA’s mechanism for optionally designating material as official. Instead, the DTR deems the published legal material to be official and subject to the authentication, preservation and security mandates.

- The DTR permits an official publisher to delegate its duties; UELMA does not contain a similar provision.
- The DTR provides greater specificity than UELMA regarding the type of electronic information that must be preserved.
- The DTR grants the Division of Revenue and Enterprise Services regulatory authority to effectuate the act's purposes.
- The DTR states an enforcement mechanism while UELMA does not.
- The DTR encourages the New Jersey Supreme Court to adopt court rules to effectuate the purposes of the act in recognition of *Winberry* concerns.