

ANNUAL REPORT - 2016

New Jersey Law Revision Commission





Please address comments and questions regarding this Report to:

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

Tel: 973-648-4575
Fax: 973-648-3123
Email: lct@njlrc.org
Web: www.njlrc.org

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

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

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

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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 Executive Director

As the Executive Director of the New Jersey Law Revision Commission, I am pleased to present the 2016 Annual Report of the Commission for the consideration of the Legislature, as called for by N.J.S. 1:12A-9. The Report reflects a productive year for the Commission, in which work continued on a number of substantial projects begun in prior years, and in which work began in new areas of the law.

Beginning this year, in recognition of the fact that New Jersey is one of fewer than 10 states whose legislatures meet throughout the year and carry bills to a second year, the Commission is modifying the look and the content of its Annual Report slightly to differentiate between the first and second years of each legislative session. The changes are modest and the goal, as always, is to make important information regarding the work of the Commission easily accessible to interested readers, while keeping the content of the Report updated. We welcome comments and suggestions regarding our new Report format.

As in prior years, the Commission worked in 2016 to increase its interactions with the Rutgers School of Law, the Seton Hall University School of Law, and the New Jersey Institute of Technology (specifically, its Law, Technology and Culture program). Students from those schools, and others both within and outside the State, have the opportunity to participate in the Commission's work as paid legislative law clerks, credit-earning externs, interns, and also for pro bono credit. Commission Staff members have also participated in on-campus programs as another avenue for facilitating student engagement with the work of the Commission. The students who have participated in these programs have said that they found the experience to be a valuable one; and their work, energy, and enthusiasm has been a benefit to the Commission.

In addition to the expanded educational outreach, Commission Staff members have also endeavored to increase awareness of the Commission's work, and the opportunities to participate in that work, among members of the New Jersey Bar. It is the hope of the Staff that by participating in bar association panel discussions, publishing journal articles focusing on the work of the Commission, and providing continuing legal education presentations, more members of the Bar will become aware of the opportunity to add their voices to the discussion of the various important issues under consideration by the Commission each year.

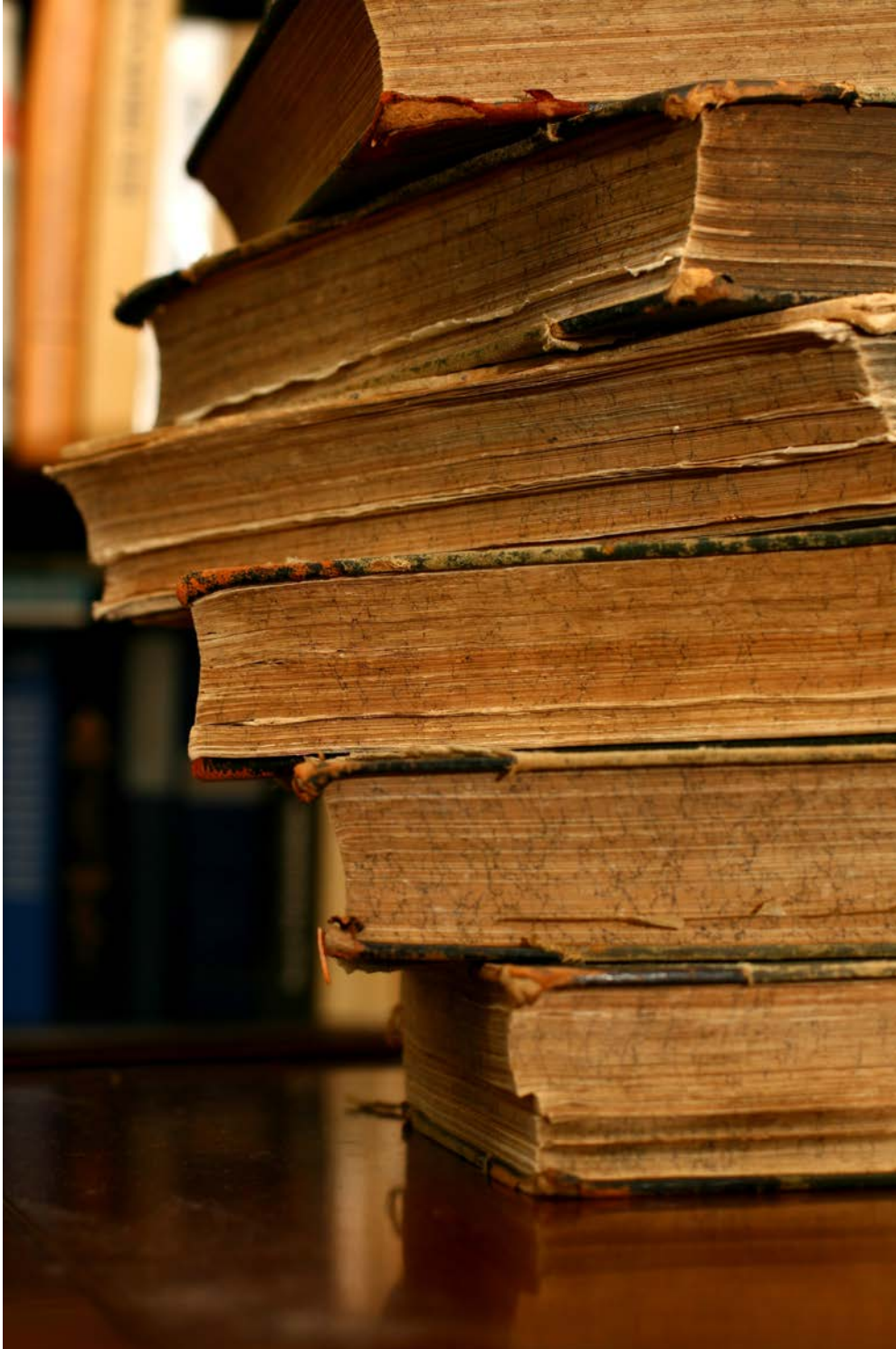
On behalf of the Commission Staff, I extend my thanks to our Commissioners, for taking the time out of their busy schedules to contribute so much to the work of the Commission. On behalf of our Commissioners and Staff, I also thank the Governor, Legislators, Legislative Staff, the Office of Legislative Services, Partisan Staff, and others whose attention affords us the opportunity to participate in the improvement of New Jersey's law. I must also extend our thanks to the individuals who provide comments and suggestions throughout the year, including those from government entities, the legal profession, the academic community, the private sector, as well as various members of the public, whose generous contributions of time, experience, and expertise were so helpful to the Commission in 2016. It is always our hope that the quality of the Commission's work reflects the breadth and the caliber of these contributions.

Laura C. Tharney
Executive Director
New Jersey Law Revision Commission

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1. – Overview of the Work of the NJLRC in 2016



1. – Overview of the Work of the NJLRC in 2016

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. The projects on which the NJLRC worked resulted from consideration of the work of the Uniform Law Commission, monitoring of New Jersey case law, and 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.

Reports Enacted During the 2016 – 2017 Legislative Session:

In 2016, the bill (S995) pertaining to the Uniform Interstate Family Support Act that was based on the work of the Commission (A2372/S995) and on the work of the Uniform Law Commission was passed by both houses of the Legislature unanimously in February, and sent to the Governor. The bill 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. On March 23, 2016, the Governor signed the bill into law as L2016, c.1.

Reports That Moved Through Both Houses of the Legislature in 2016

In 2016, the bill (S92) pertaining to the Overseas Residents Absentee Voting Law, based on the work of the Commission (A2815/S92), received bipartisan support and was passed by the Senate in February, and the Assembly in October. The bill was conditionally vetoed by the Governor in December of 2016.

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, or represent subject areas on which the NJLRC provided information and support to the Legislature:

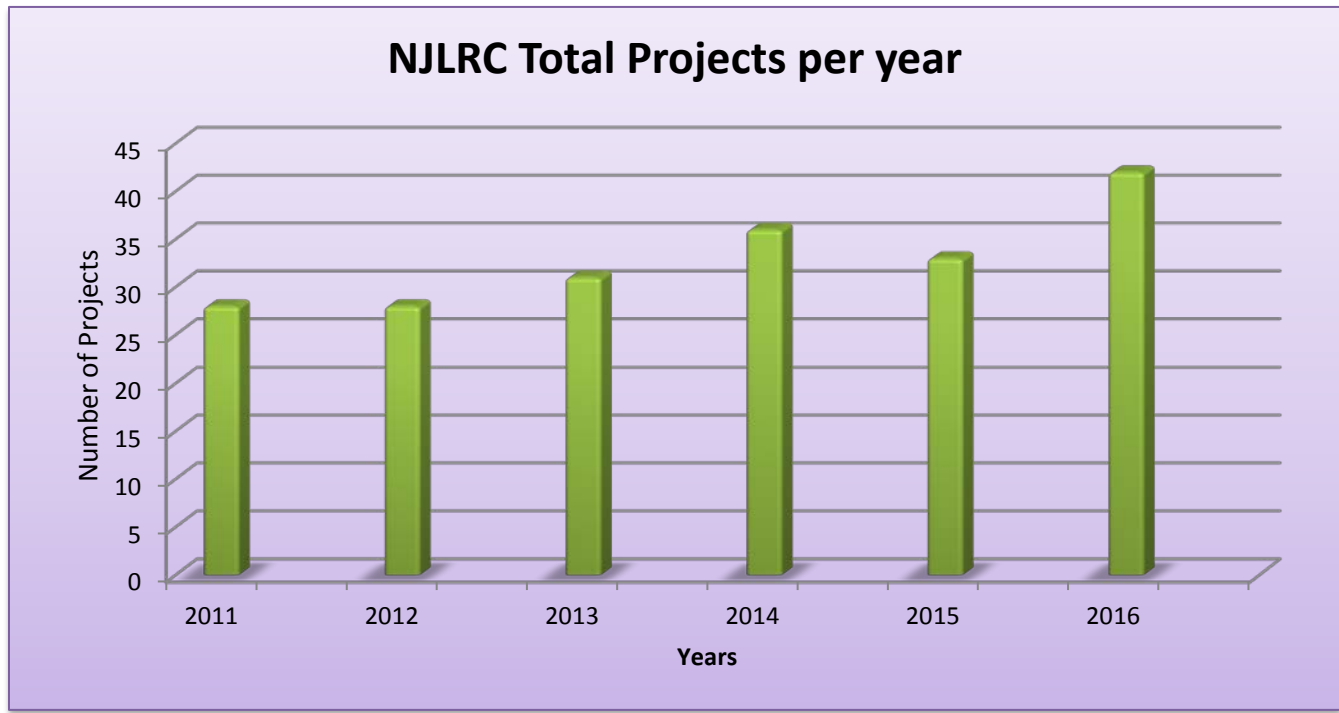
- (Effect of) Abstentions
 - Adverse Possession
-

- Bulk Sale Tax Notification
- (Uniform) Fiduciary Access to Digital Assets Act
- (Uniform) Foreign Country Money Judgment Recognition Act
- Landlord-Tenant
- (Revised Uniform) Law on Notarial Acts
- Overseas Residents Absentee Voting Law
- Pejorative Terms Regarding Persons With Physical or Sensory Disabilities
- 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
Assemblyman Michael Patrick Carroll
Assemblyman Nicholas Chiaravalloti
Assemblyman Herb Conaway, Jr.
Assemblyman Craig J. Coughlin
Assemblyman Ronald Dancer
Assemblyman Wayne P. DeAngelo
Assemblywoman Joann Downey
Assemblyman Tim Eustace
Assemblyman Jerry Green
Assemblyman Louis D. Greenwald
Assemblyman Eric Houghtaling
Assemblywoman Valerie Vainieri Huttle
Assemblyman Gordon M. Johnson
Assemblywoman Patricia Egan Jones
Assemblyman Sean T. Kean
Assemblyman James J. Kennedy
Assemblywoman Pamela R. Lampitt
Assemblyman Vincent Mazzeo
Assemblywoman Angela V. McKnight
Assemblyman John F. McKeon
Assemblywoman Gabriela M. Mosquera
Assemblywoman Nancy J. Pinkin
Assemblyman Gary S. Schaer
Assemblywoman Holly Schepisi
Assemblywoman Cleopatra G. Tucker
Assemblyman John S. Wisniewski
Senator Peter J. Barnes, III
Senator James Beach
Senator Nilsa Cruz-Perez
Senator Patrick J. Diegnan, Jr.
Senator Robert M. Gordon
Senator Nicholas P. Scutari
Senator Robert Singer

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 2016. The work of the NJLRC benefits tremendously from the willingness of individuals and groups to contribute their time, experience, and expertise to assist the Commission.

The NJLRC apologizes for any inadvertent omissions from the following list:

Administrative Office of the Courts, New Jersey

The American Law Institute

Anthony M. Arbore, Esq., Forster Arbore Velez, Attorneys at Law

Capt. Tina Arcaro, Delaware River and Bay Authority

Mike Ashton, Live2Inspire

Linda Babecki, Esq., Co-Acting Chief Housing Counsel, Legal Services of New Jersey

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

Debra Bradley, Esq., Director of Government Relations, New Jersey Principals and Supervisors Association

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

Ronald Chen, Dean, Rutgers School of Law – Newark

Jerry Clancy, Princeton Desktop Systems, Inc.

Judith Cole, Executive Office Coordinator, The American Law Institute

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

Linda Czipo, Executive Director, Center for Non-Profits

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 Patrol Traffic Officer 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

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

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

Patrick Hobbs, Director of Athletics, Rutgers University

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

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

Jeralyn Lawrence, Esq., Past Chair, NJSBA's Family Law Section

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

Legal Services of New Jersey

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

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

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

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

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

Jim Moseley, President, Limousine Association of New Jersey

Motorcycle Mall

Lt. Dan Murray, Roxbury Police Department

Joyce Murray, Esq., LLP

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

New Jersey State Bar Association

New Jersey State Library

John Oberdeik, Professor, Rutgers School of Law - Camden

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

Benjamin Orzeske, Legislative Counsel, Uniform Law Commission

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

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

Ronald L. Perl, Esq., Hill Wallack, LLP

Michael Pesce, Community Management Corp.

Elizabeth Petrick, Assistant Professor, New Jersey Institute of Technology

Daniel Phillips, Legislative Liaison, Administrative Office of the Courts

Nithisha Prasad, B.S. Candidate, New Jersey Institute of Technology

Jonathan Pushman, Legislative Advocate, New Jersey School Boards Association

J. David Ramsey, Esq., Becker & Poliakoff

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

Regina M. Spielberg, Esq., Partner, Schenck, Price, Smith & King, LLP

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

Uniform Law Commission

Donald D. Vanarelli, Esq., Law Offices of Donald D. Vanarelli

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

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

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

Det. Joseph Williams, Berkeley Heights Police Department

John Zimmerman, Chief of Police, Kenilworth Police Department



Clarify

Simplify

Remedy

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 49 bills based upon 67 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):

2016

- *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.

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 that had been 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 owners 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.*, 2015 WL 6181084 (App. Div. 2015)
- *State v. Tate*, 220 N.J. 393 (2015)
- *Booker v. Rice*, 431 N.J. Super. 548 (App. Div. 2013)
- *In re T.J.S.*, 419 N.J. Super. 46 (App. Div. 2011)
- *Pear Street, LLC*, 2011 WL 9102 (App. Div. 2011)
- *Haven Savings Bank v. Zanolini*, 416 N.J. Super. 151 (App. Div. 2010)
- *Marino v. Marino*, 200 N.J. 315 (2009)
- *Tashjian v. Trapini*, 2009 WL 2176723 (App. Div. 2009)
- *New Jersey Div. of Youth and Family Services v. A.P.*, 408 N.J. Super. 252 (App. Div. 2009)
- *State v. Broom-Smith*, 406 N.J. Super. 228 (App. Div. 2009)
- *Seaboard Towers Development Co., LLC v. AC Holding Corp., II*, 2008 WL 2340016 (App. Div. 2008)
- *Patel v. 323 Cent. Ave. Corp.*, 2008 WL 724052 (App. Div. 2008)
- *Alampi v. Pegasus Group, L.L.C.*, 2008 WL 140952 (App. Div. 2008)
- *Michael J. Wright Const. Co., Inc. v. Kara Homes, Inc.*, 396 B.R. 131 (D.N.J. 2008)
- *Loder v. Neppl*, 2007 WL 4118319 (App. Div. 2007)
- *Semenecz v. Borough of Hasbrouck Heights*, 2006 WL 2819813 (Law Div. 2006)
- *Warren County Bar Ass'n v. Board of Chosen Freeholders of County of Warren*, 386 N.J. Super. 194 (App. Div. 2006)
- *Gebro-Hammer Associates, Inc. v. Sebbag*, 385 N.J. Super. 291 (App. Div. 2006)
- *L'Esperance v. Devaney*, 2005 WL 3092849 (App. Div. 2005)
- *Morton v. 4 Orchard Land Trust*, 180 N.J. 118 (2004)
- *Morton v. 4 Orchard Land Trust*, 362 N.J. Super. 190 (App. Div. 2003)
- *Board of Chosen Freeholders of County of Morris v. State*, 159 N.J. 565 (1999)
- *James Const. Co., Inc. v. Director, Div. of Taxation*, 18 N.J. Tax 224 (1999)
- *Prant v. Sterling*, 332 N.J. Super. 369 (Ch. Div. 1999)
- *Wingate v. Estate of Ryan*, 149 N.J. 227 (1997)
- *State v. Storm*, 141 N.J. 245 (1995)

Journal Articles and Scholarly Reference Materials that Mention the NJLRC:

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

- 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 (2015)
- 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* §§22:27, 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)
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3. – History and Purpose of the Commission



3. – *History and Purpose of the Commission*

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

In 1985, the Legislature enacted 1:12A-1 et seq., effective January 21, 1986, to transfer the functions of statutory revision and codification to a newly created NJLRC in order to provide for a “continuous review of the statutory law of the State.” N.J.S. 1:12A-1, Introductory Statement. The Commission began work in 1987 and has, since that time, filed 156 Reports with the Legislature and one with the New Jersey Supreme Court. Fifty-three of the filed reports have been enacted into law, and the Report filed with the Supreme Court resulted in a change to the Court Rules.

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

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

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

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

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

4. – Final Reports and Recommendations



4. – Final Reports and Recommendations

Bulk Sale Tax Notification

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

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

"I have the privilege of working with some of the sharpest legal minds in the State, to propose meaningful revisions to existing and proposed laws. The experience could not be more rewarding."

*Vito A. Gagliardi, Jr., Esq.,
Porzio, Bromberg & Newman, P.C.
(2016)*

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

The notification process could delay mortgage commitments or other time sensitive matters, or even complicate a foreclosure or short sale. While the limited exemptions provide some relief for sole or married owners, they fail to address property ownership structures of a similar nature; in these instances, the purchaser must either accept an extended closing process or assume any potential post-closing State tax liability.

The Final Report recommends statutory revisions to N.J.S. 54:50-38 to clarify that the statutory exemption from the application of the Bulk Sales Act includes more than one individual, trust or estate co-owning a simple dwelling house or seasonal rental unit as joint tenants or tenants in common.

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 from the rear of the vehicles, the Commission proposed revisions to the statute and encouraged feedback from interested constituencies.

In a Final Report released 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.

Sales and Use Tax Exemption

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

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

While the Appellate Division chose to interpret the term "bus" in accordance with its ordinary meaning, the Final Report recommends revisions which mirror the court's reasoning and result, but also cross-reference the Title 48 definition of "autobus" to ensure that the Legislature's statutory carve-outs are incorporated and remain consistent in the future.

Special Needs Trusts

The Commission released a Final Report in April 2016 that proposed codifying the New Jersey Supreme Court decision in *Saccone v. Bd. of Trustees of the Police and Fireman's Ret. Sys.*, 219 N.J. 369, 388 (2014), in which the Court held that a retired firefighter could direct the survivors' benefits for a child with a disability to a first-party special needs trust (SNT). The Court "construe[d] the reference to 'child' " in the statute as the equivalent to "a first-party SNT established" solely for the benefit of a child with a disability. The Court viewed the SNT as an extension of the child.

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

The Final Report recommends statutory language to codify the decision of the New Jersey Supreme Court that the compensation payable to an individual designated to receive benefits from a state-administered retirement system may be directed to a special needs trust established for the benefit of that individual. The Final Report recommends clarifying the statutes governing state-administered pensions and benefits to enhance public awareness of the Supreme Court decision in *Saccone*.

Uniform Act on Prevention of and Remedies for Human Trafficking

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

As a result of the NJLRC's expanded outreach to legal scholars, the Rutgers School of Law – Newark's International Human Rights Clinic submitted a Memorandum identifying some potential ways in which New Jersey's existing human trafficking laws could be strengthened. The Human Rights Clinic suggested (1) the amendment of New Jersey law immunizing human trafficking victims, particularly minors, from prosecution for prostitution-related offenses, (2) revision of New Jersey law to establish business entity liability for human trafficking crimes, (3) expansion of the New Jersey Human Trafficking Commission's duties to include oversight of a broader anti-trafficking public awareness campaign, and (4) clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws. In October 2014, Staff prepared a Memorandum analyzing these areas for the Commission's consideration. In February 2015, Staff also prepared a Tentative Report which recommended strengthening New Jersey's human trafficking laws by clarifying business entity liability.

"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)*

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 is working in conjunction with the Human Trafficking Commission to monitor and evaluate legislative efforts to combat human trafficking in New Jersey.

Uniform Common Interest Ownership Act

In October, the Commission released a Final Report on the law relating to common interest communities based on the Uniform Common Interest Ownership Act (UCIOA) written by the Uniform Law Commission. This law is of paramount importance. It has been claimed that more than one in seven residents in New Jersey live in common interest communities including condominiums, co-ops, and planned unit

developments. The current condominium law, N.J.S. 46:8B-1 et seq., was enacted in 1969. It was amended or supplemented in 1975, 1979, 1980, 1985, 1991, 1995, 1996, 1997, and 2007, but these changes were narrow and dealt with very particular issues. The current law does not provide comprehensive rules for condominiums. It also does not cover cooperatives, and whether it covers other common interest communities such as planned unit developments remains a question.

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

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

The Commission decided that rather than attempt to deal with the whole of UCIOA, it would concentrate on the first two Articles. These articles will form a framework of law for all of the different kinds of common interest communities. The Commission intends later projects focusing on particular issues concerning common interest communities covered by other parts of UCIOA and by current New Jersey law.

Uniform Electronic Legal Material Act

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

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

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

Similarly, the choice of technologies for authentication and preservation is left to the individual states, but it is contemplated that the UELMA will harmonize standards for acceptance of electronic legal material across jurisdictional boundaries. The Act is intended to be complementary to the Uniform Commercial Code

(which governs sales and many commercial transactions, the Uniform Real Property Electronic Recording Act (which provides for electronic recording of real property instruments), and the Uniform Electronic Transactions Act (which addresses electronic commerce).

In discussions regarding the UELMA, the Commission has identified areas that may benefit from revisions further promoting the accessibility, reliability and security of New Jersey's legal materials.

In November 2016, the Commission released a Final Report recommending the adoption of a version of the UELMA which (i) incorporates references to New Jersey's existing publication mandates, (ii) applies to existing electronic legal material, while UELMA only applies to materials published on or after the effective date, (iii) dispenses with UELMA's mechanism for optionally designating material as official and instead, deems the published legal material to be official and subject to the authentication, preservation and security mandates, (iv) permits an official publisher to delegate its duties, (v) provides greater specificity than UELMA regarding the type of electronic information that must be preserved, (vi) grants the Division of Revenue and Enterprise Services regulatory authority to effectuate the Act's purposes, (vii) includes an enforcement mechanism, and (viii) encourages the New Jersey Supreme Court to adopt court rules to effectuate the purposes of the Act in recognition of *Winberry* concerns.

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

In December 2016, the Commission released a Final Report concerning the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (the Act), which was designed to establish uniform procedures for enforcing out-of-state domestic violence protection orders. The Commission recommends that the Uniform Act not be enacted in New Jersey at this time, in light of the existing Office of the New Jersey Attorney General Guidelines governing interstate enforcement of protective orders and the recent enactment of the Sexual Assault Survivor Protection Act of 2015, which largely address the issues contemplated by the Uniform Act.

The Uniform Law Commission (ULC) promulgated the Act in 2000, and later amended it in 2002. Twenty jurisdictions have adopted one of the following: the original Act, the amended Act, or a modified version of the Act. The goal of the Uniform Act is to enforce the full faith and credit protection afforded by the federal Violence Against Women Act (VAWA) to individuals who encounter or are threatened by sexual violence when they cross state lines.

The prevention of sexual violence is addressed in New Jersey through a combination of statutory provisions, including the Prevention of Domestic Violence Act (PDVA), N.J.S. 2C:25-17, et seq. and the statutes enacted under the SASPA which extend the protections of the PDVA to individuals who encounter or are threatened by nonconsensual sexual contact, sexual assault, or lewdness.

The Legislature, in its latest consideration of the statutes involving protective orders for individuals experiencing or threatened by sexual violence, preserved the framework established under the PDVA, allowing the OAG to enact regulations, which govern out-of-state protective orders. The Commission recommends that the UIEDVPOA not be enacted in New Jersey at this time, in deference to the existing framework established to accomplish the goals of the Uniform Act.

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 springs from application of the statute in three separate cases involving school secretaries attempting to retain tenure rights.

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

“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)*

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

In December 2014, the Commission released a Tentative Report identifying potential revisions intended to clarify New Jersey law, N.J.S. 18A:17-2, regarding the movement or transfer of tenured clerical, secretarial, and other non-teaching employees. A Revised

Tentative Report was released in January 2016 to give an expanded pool of potential commenters an opportunity to consider further analysis and refined proposed revisions.

A Final Report is expected in early 2017.

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 the introduction of Senate Bill 1687 in February 2016, which would remove certain bars to employment for convicted offenders and which would substantially amend most sections of the RCOA, the Commission offered its support to the respective bill sponsors after a thorough comparison between its provisions and the Commission’s progress. In November 2016, Senate Bill 1687 reported from the Senate Law and Public Safety Committee and was referred to the Senate Budget and Appropriations Committee.

Expungement

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

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

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

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

*Grace C. Bertone, Esq.,
Bertone Piccini
(2013)*

The Commission sought to draft revisions that would clarify N.J.S. 2C:52-4.1 to reflect the Court’s holding and further simplify the statutory language in a manner beneficial to individuals filing pro se expungement provisions. In October 2015, Staff prepared a Draft Tentative Report incorporating these revisions. The Tentative Report also proposes eliminating subsections b.(4) and b.(5) of N.J.S. 52-4.1 because

these subsections do not accurately reflect New Jersey's current expungement process in which individuals petition for the expungement of both juvenile adjudications and adult convictions contemporaneously. The Commission considered comments to the modifications of N.J.S. 2C:52-4.1 in June 2016 and July 2016. Staff continues to receive additional feedback on these provisions and anticipates delivering a Final Report in 2017.

Franchise Practices Act

The Commission began work, in April 2014, on a project involving the New Jersey Franchise Practices Act (FPA) based on the District Court decision in *Navraj Rest. Group, LLC v. Pancharo's Franchise Corp.*, 2013 WL 4430837 (D.N.J. Aug. 15, 2013). The Court, in *Navraj* at *5, held that although the FPA specifically refers to motor vehicle franchises, the “[e]nforcement of forum selection clauses in contracts subject to the [NJFPA] would substantially undermine the protections that the Legislature intended to afford to all New Jersey franchisees”, rendering forum selection clauses between franchisors and franchisees “presumptively invalid”.

The Commission continues work on a project involving the New Jersey Franchise Practices Act (FPA) to clarify the provisions concerning the gross sales threshold and to update the Act based on the case law developments concerning forum-selection, choice-of-law clauses, and the requirements of the Federal Arbitration Act. Commission Staff is conducting outreach and seeking comment from interested stakeholders to update the statute, which will be presented to the Commission in early 2017.

6. – Work in Progress



6. – *Work in Progress*

Affidavit of Merit

In April 2016, the Commission considered the statements of a federal district court judge, as reported in a legal publication, calling on the New Jersey Legislature to amend the Affidavit of Merit (AOM) statutes. The AOM governs any action to recover damages for personal injuries, wrongful death, or property damage resulting from an alleged act of malpractice or negligence by a licensed person in his/her profession or occupation, where the plaintiff must provide each defendant, with an affidavit from an appropriate licensed person attesting that a reasonable probability exists that the care, skill, or knowledge exercised or exhibited in the treatment, practice, or work of the individual, was outside of established professional or occupational standards or treatment practices.

Subsequently, the Legislature introduced a bill to update the requirements of the AOM statutes. The Commission continues to support the work of the Legislature in this area and is willing to assist, if needed, during the legislative process.

Aggravated Sexual Assault

In July 2016, the Commission authorized further research to determine whether modifying the statutory requirements of the aggravated assault statute, N.J.S.A. 2C:11-4(a), based on several judicial rulings which interpret the statute, will better clarify the “probability of death” requirement. Work on this project began in response to the case of *State v. Rose*, 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.

Ante-mortem Probate

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

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

Consumer Fraud Act

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

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

*Andrew O. Bunn, Esq.,
DLA Piper LLP (US)
(2013)*

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

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

Driving While Intoxicated

In July 2016, 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

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

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

Hand-held Devices

In September 2016, the Commission considered the possibility of clarifying the language of N.J.S. 39:4-97.3, which controls the use of hand held devices while operating motor vehicles. Specifically, members of the public expressed two areas of concern: the use of devices while *stopped* in traffic and the fact that applicable statutory language neither permits nor prohibits dialing a cell phone while *driving*.

The unpublished Appellate Division case, *State v. Malone*, 2011 WL 2582730 (App. Div. 2011), is reportedly often relied upon by motor vehicle operators cited for texting while driving for its rejection of the contention that a motorist is not permitted to hold a wireless telephone at any time while driving, as the plain language of the statute permits motorists to hold the cell phone in one hand for the limited purpose of activating, deactivating, or initiating a function of the telephone. A Tentative Report may be released in 2017, pending additional research.

Managerial Executives

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

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

Given the fact that “assistant commissioner” is not a title utilized by the Division of State Police, the Court could not glean from the plain language of the statute its proper application and turned to extrinsic evidence to determine the Legislature’s intent, finding a clear intent to broaden the categories of public employees eligible to participate in collective negotiations. A Tentative Report is anticipated for 2017.

Mandatory Sentencing

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

State v. Grate arose from defendants’ convictions for “second-degree unlawful possession of a weapon and third-degree unlawful possession of a weapon at an educational institution.” Having determined that defendants were likely involved in organized criminal activity, the court made both sentences subject to the

mandatory five-year parole disqualifier under N.J.S. 2C:39-5(i). One defendant petitioned for certification, arguing that the mandatory sentence imposed under New Jersey law was unconstitutional, citing *Alleyne*. Both the State and the attorney general conceded that *Alleyne* rendered N.J.S. 2C:39-5(i) unconstitutional as written and asked the Court to amend the statute, which the Court declined to do.

The Supreme Court of the United States held in *Alleyne v. United States* that any fact increasing the mandatory minimum sentence is an element that must be submitted to the jury, to be found beyond a reasonable doubt. In *Apprendi 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 ten to 20 years, the Court identified a concrete limit on the types of facts that legislatures may designate as sentencing factors and held that a fact is, by definition, an element of the offense and must be submitted to the jury if it increases the punishment above what is otherwise legally prescribed. A Tentative Report is anticipated for 2017.

Nonprofit Organizations

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

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

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

Obstructing Highways and Other Public Passages

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

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

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

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

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

"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)*

Staff presented a Memorandum to the Commission in December of 2015 providing additional background information regarding culpability requirements for disorderly persons offenses and anticipates preparing a Draft Tentative Report for consideration in early 2017.

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. In particular, it was suggested that the emphasized "subdivision" language contained in subsection (d) of the enacted law was a potential typesetting error. Staff noted that 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)

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

The plaintiff in *Oyola* argued that, by statute, the workers' compensation check he received, for \$171,074, for injuries sustained in a car accident, should have been credited against his total damages, obliging the Property Liability Insurance Guaranty Association (PLIGA) to pay the difference between total damages

and workers' compensation, stipulated to be at least \$85,000. PLIGA countered that the statute should have been applied in such a way that the payment would have first offset the amount of PLIGA's obligation to replace the \$85,000 lost as a result of the insolvent insurer, effectively nullifying its obligation to *Oyala*. The Court found the relevant statutory language ambiguous, saying that it was susceptible to more than one interpretation. A Tentative Report is anticipated for 2017.

Property Tax

In March 2016, 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. His 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 Health and Safety

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

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

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

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

Staff is currently researching and gathering further information regarding the intent, scope and potential applicability of N.J.S. 2C:40-18, and anticipates preparing a Tentative Report for the Commission's consideration in early 2017.

Sidewalk Tort Liability

In June 2016, 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. Judicial precedent overturned the common

"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)*

law rule that commercial property owners had no duty to maintain abutting sidewalks. The New Jersey Supreme Court established, in a 1981 decision, 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.

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 arguably 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

In July 2016, 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 that case, 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. Because the area of the law in question is highly specialized, Staff is engaging in outreach and a review of the role of administrative law in this area before proposing any statutory revisions.

Unclaimed Real Property

In December 2016, the Commission approved a project concerning unclaimed real property. The intent is to produce a 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.

In 1998 a provision on unclaimed real property was made part of its recommendation of an old version of the Uniform Unclaimed Property Act. Since that time, the Commission has withdrawn its recommendation of the Uniform Act and, with it, the provision on unclaimed real property. This project will reconsider the 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.

Uniform Act on Prevention of and Remedies for Human Trafficking

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

As a result of the NJLRC's expanded outreach to legal scholars, the Rutgers School of Law – Newark's International Human Rights Clinic submitted a Memorandum identifying some potential ways in which New Jersey's existing human trafficking laws could be strengthened. The Human Rights Clinic suggested (1) the amendment of New Jersey law immunizing human trafficking victims, particularly minors, from prosecution for prostitution-related offenses, (2) revision of New Jersey law to establish business entity liability for human trafficking crimes, (3) expansion of the New Jersey Human Trafficking Commission's duties to include oversight of a broader anti-trafficking public awareness campaign, and (4) clarification of some inconsistent and confusion language existing in current New Jersey anti-trafficking laws. In October 2014, Staff prepared a Memorandum analyzing these areas for the Commission's consideration. In February 2015, Staff also prepared a Tentative Report which recommended strengthening New Jersey's human trafficking laws by clarifying business entity liability and specifically addressing sexually explicit performances.

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

Uniform Asset-Preservation Orders Act

Public comment was offered to the Commission last year concerning the Uniform Asset-Preservation Orders Act (UAPOA). The UAPOA provides for *in personam* orders which impose a preliminary injunction on the asset owner and collateral restraints upon non-parties, such as the defendant's banking institution, to preserve assets from dissipation by the defendant. The UAPOA is designed to address the technological advances that allow a defendant to dispose of assets that would satisfy a judgment with the click of a mouse or the push of a button. The UAPOA focuses on assets that are in a foreign jurisdiction and beyond the reach of an *in rem* order for their preservation. The UAPOA allows for international cross-border recognition of the preservation order to thwart the rapid movement of funds between jurisdictions.

The UAPOA is procedural in nature and applies only when the underlying action involves monetary damages. It does not generally apply to consumer debt, family law, or estate matters. The asset-preservation order may be sought at the time the underlying action is filed and it remains available while the action is pending. The UAPOA has not been enacted, but was introduced in Alabama, Colorado, North Dakota, and the District of Columbia. Commission Staff is considering the use and effect of asset-preservation orders provided in common-law jurisdictions, like England and Canada. Staff is also while conducting research and outreach to determine if the drafting inconsistencies in the uniform act, which were identified by commenters, may be reconciled in a modified version of the uniform law. Work on this project is ongoing and a Tentative Report is planned for 2017.

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 will cover management of the communities and voting by unit owners both on substantive matters and in elections of executive boards. It is projected that the Report will be generally based on the Uniform Common Interest Ownership Act written by the Uniform Law Commission, but will include provisions based on New Jersey law and practice. Work has just begun on this project.

Uniform Probate Code

In February 2016, 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 proposed or enacted the most recent amendments to the UPC, 17 states and the U.S. Virgin Islands have enacted it.

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 inviting 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 2017.

7. – No Action Recommended



7. – *No Action Recommended*

Anti-Eviction Act - Removal of Residential Tenants

The Commission considered whether to propose revising N.J.S. 2A:18-61.1(l)(3) in accord with the New Jersey Supreme Court decision in *Cashin v. Bello*, 223 N.J. 328, 330-31 (2015), where the Court considered whether a converted garage constitutes a building under this provision of the Anti-Eviction Act. Under N.J.S. 2A:18-61.1(l)(3), the “owner of a building of three residential units or less” is permitted to remove a tenant, if the owner intends to personally occupy one of the units. The Court held that the plain language meaning of the term “building” is a freestanding physical structure and, as a consequence, the tenant of the converted garage may be removed under subsection (l)(3). Following a review of the comments received from a retired jurist and members of the bar, the Commission decided to incorporate the findings of this project into the Commission’s previous work on the Landlord-Tenant Act and concluded work on this independent project.

I.E. Test, LLC. V. Carroll

In September 2016, the Commission considered a potential project relating to the New Jersey Supreme Court’s opinion in *IE Test L.L.C. v. Carroll*, 226 N.J. 166 (2016), which interprets New Jersey’s limited liability company act and provides guidance regarding when courts may order the expulsion of an LLC member. This recently decided case has been considered noteworthy as one of the first cases interpreting New Jersey’s Revised Limited Liability Company Act.

In particular, the Court focused on subsection (c) of N.J.S. 42:2B-24 of the New Jersey’s then effective Limited Liability Company Act which considers whether “the member engaged in conduct relating to the limited liability company business which makes it not reasonably practicable to carry on the business with the member as a member of the limited liability company.” The Court noted that the phrase “not reasonably practicable” is undefined, and accordingly established seven factors which a court should consider before ordering the expulsion of an LLC member. The proposed project would seek to incorporate the Court’s evaluative factors in New Jersey’s limited liability statute to provide greater clarity for both the New Jersey business community and other jurisdictions that may have adopted similar language.

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

*Laura C. Tharney
Executive Director, NJLRC
(2013)*

The Commission determined that, while a project in this area is not necessary at this time, the Court’s decision creates a general standard that will likely be clarified in subsequent decisions. The Commission accordingly directed Staff to monitor future case law in this area.

Open Public Records Act

In April 2016, a member of the public contacted the Commission to propose a project regarding the mandatory award of attorneys’ fees to the prevailing party in an Open Public Records Act (“OPRA”) action. In New Jersey, fee determinations are generally guided by the “American Rule” in which the prevailing party is not entitled to collect attorneys’ fees from the losing party. However, the Legislature has created statutory

exceptions to this rule in particular instances to ensure that plaintiffs with valid claims can retain competent counsel to assert important statutory rights and promote justice. In some cases, the decision whether to award attorney fees are left to the court's discretion, but in statutes such as OPRA, the recovery of attorney fees is the victor's entitlement. Broadly speaking, it is possible that the mandatory nature of such fee awards may provide incentive to pursue frivolous litigation against government agencies.

Staff presented a Memorandum to the Commission in May 2016 and June 2016 providing research regarding the current New Jersey law, as well as pending legislation in this area. Based upon the pending legislation, the Commission instructed Staff to monitor developments in this area of the law.

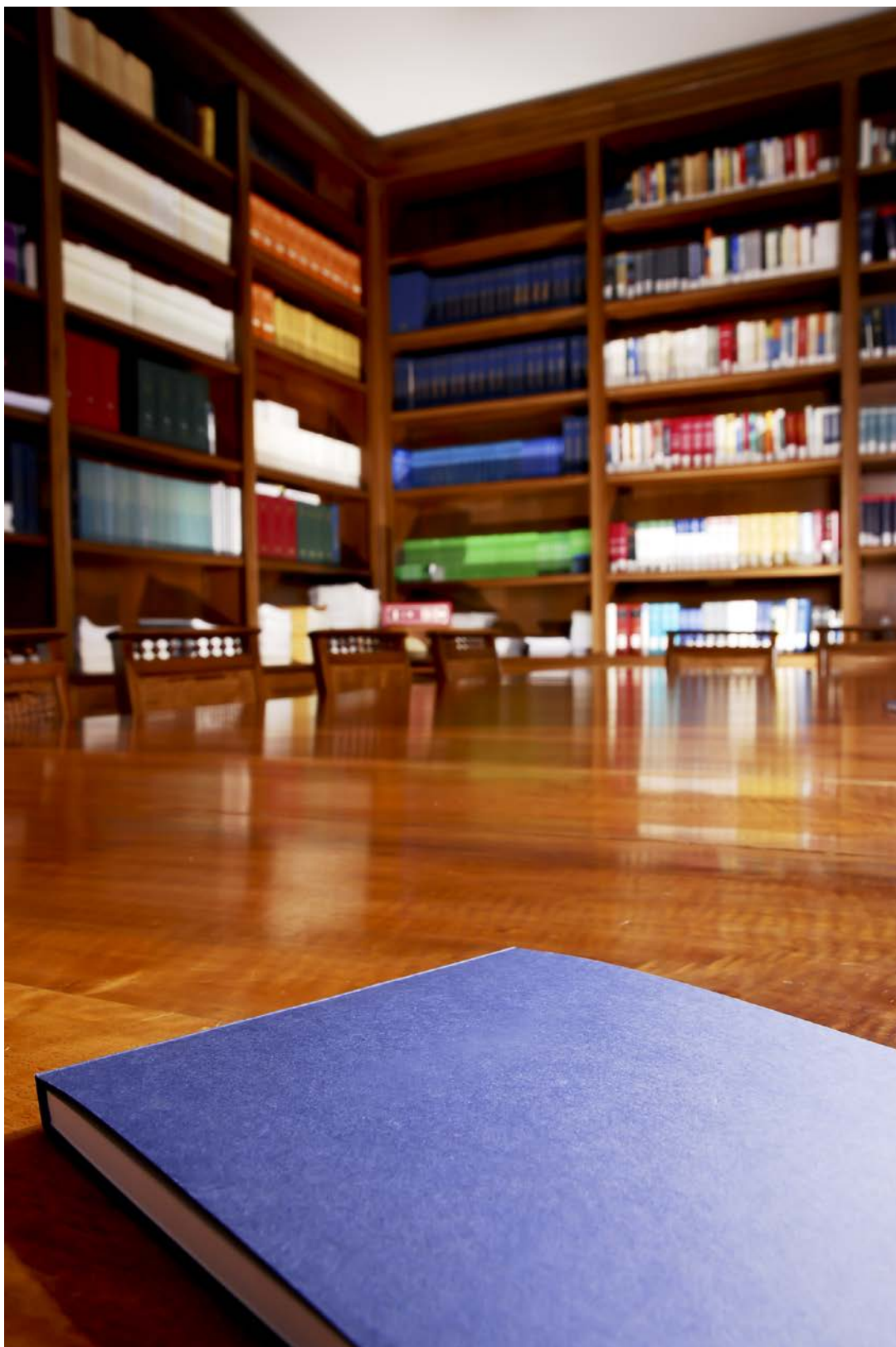
Retired Police Officer Right to Carry

In March 2016, the Commission considered working on a project relating to the right of certain retired police officers to carry concealed weapons. A member of the public brought to the Commission's attention that retired campus officers are not included in the enumerated list of law enforcement officers permitted to carry under N.J.S. 2C:39-6(1).

New Jersey courts have not taken either the position that officers are state agency employees by virtue of working for public universities, or that receiving state training and performing police work entitles them to be treated under the relevant statute as retired police officers. And federal law in the form of the Law Enforcement Officers Safety Act (LEOSA), which entitles retired police officers to carry concealed weapons in all 50 states, does not cover campus police officers.

While in agreement that campus police officers raised a valid concern, the Commission determined that a project in this area would appear to exceed the scope of the Commission's mandate, and that the more appropriate way to address the issue would be by bringing it directly to the attention of the Legislature.

8. – Members and Staff of the NJLRC in 2015



8. – *Members and Staff of the NJLRC in 2016*

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.

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.

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 as well as leading the firm's pro bono efforts in New Jersey.

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.

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.

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, 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 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, and became permanent Dean, and then Co-Dean in 2015. 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. Kears 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. 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.

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. The courses that he teaches include Constitutional Law, Civil Procedure, Criminal Procedure, and Evidence.

The Staff of the Commission is:

Laura C. Tharney, Executive Director

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

Jayne J. Johnson, Counsel

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

Vito J. Petitti, Counsel

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

Susan G. Thatch, Counsel

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

Linda Woodards-French, Executive Assistant

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

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

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

Student Legislative Law Clerks and Externs:

In addition to the full- and part-time Commission Staff members, law students from New Jersey's three law school campuses 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 2016 are:

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

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

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

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

An outgrowth of the Commission's outreach efforts was the expansion of its interaction with students from New Jersey's three law school campuses and other educational institutions. The NJLRC now provides opportunities for student credit-earning externship placements, internships, and student pro bono hours. During the Spring semester of 2016, research and drafting assistance was provided to the NJLRC by pre-law student extern Michael Tadros through a cooperative relationship with the New Jersey Institute of Technology and Alison Lefkovitz, Assistant Professor and Director of NJIT's Law, Technology & Culture program. In addition, during the Spring and Fall semesters of 2016, pro bono legal research and drafting assistance was provided to the NJLRC by law students Blair Gerold, Andrew Leahey, and Carl Minnitti of the Rutgers School of Law – Camden in cooperation with Professor Jill Friedman, Professor Sarah Ricks, and Camden's Pro Bono Research Project, and by law students Michael Heitmann and Lindsey Farina in cooperation with Lori Borgen, Esq., Associate Director of the Center for Social Justice, at Seton Hall University School of Law. Staff members have also participated in various programs presented by the law schools and by NJIT.
