

MINUTES OF COMMISSION MEETING

January 21, 2021

Present at the New Jersey Law Revision Commission meeting, held via video conference, were: Chairman Vito A. Gagliardi, Jr.; Commissioner Andrew O. Bunn; Commissioner Virginia Long; Commissioner Louis N. Rainone; Professor Bernard W. Bell, of Rutgers Law School, attending on behalf of Commissioner David Lopez; and Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

Minutes

The Minutes from the December 17, 2020 meeting were unanimously approved by the Commission on the motion of Commissioner Long, which was seconded by Commissioner Bertone.

Temporary Disability Benefits

The efforts and risks borne by public interest volunteers have long been recognized by the New Jersey employment law. N.J.S. 34:15-75 provides for compensation for injury or death to a list of enumerated volunteers and other workers.

In *Kocanowski v. Bridgewater*, 452 N.J. Super. (App. Div. 2017); 237 N.J. 3 (2019), a volunteer firefighter, who was not otherwise employed, was injured while performing her duty. The Division of Workers' Compensation denied her benefits and characterized the statute as a wage replacement mechanism. The Appellate Division affirmed the Division's decision and noted that pre-injury outside employment is a necessary predicate to awarding temp disability. Ms. Kocanowski appealed this decision to the New Jersey Supreme Court. The Court's decision formed the basis of the Draft Final Report that Samuel Silver discussed with the Commission.

The New Jersey Supreme Court noted that the statutory reference to compensation is subject to more than one interpretation, and examined extrinsic evidence and the legislative history of this statute. The Court determined that the 1952 statutory amendment that created NJS 34:15-75 grants all volunteer firefighters maximum compensation regardless of their employment status at the time of the injury.

Mr. Silver advised the Commission that the proposed modifications set forth in the Appendix to the Report are designed to reflect the Supreme Court's decision in *Kocanowski*. The Appendix renders the text gender-neutral, removes the statutory reference to the phrase "based on a weekly salary," and covers injury or death that occur during the course of performing volunteer duties, regardless of outside employment status at the time of injury.

Comments regarding the proposed modifications were sought from numerous stakeholders. One responding practitioner advised that the statute is clear, and that the doctrine in *Cunningham v. Atl. States Cast Iron Pipe Co.*, 386 N.J. Super. 423, 901 A.2d 956 (App. Div. 2006), which

provides that a claimant is only entitled to temporary disability benefits after termination and upon a showing of lost wages, has been applied consistently in Workers' Compensation cases.

The Workers' Compensation section of the New Jersey State Bar Association agreed that the proposed changes are necessary to clarify the statute to conform with the *Kocanowski* decision, and that the clarification in the Appendix to the Report is consistent with the Court's decision. In addition, Galen Booth, Esq., counsel for Jennifer Kocanowski in her appeal before New Jersey Supreme Court, advised the Commission that he "fully supports the amendment of the statute in question to comport with the Supreme Court's landmark decision."

Commissioner Long requested that in subsection a. of the statute, that the word "their" be replaced with the words "his or her" in order to parallel the recommended language in preceding paragraph. Commissioner Bunn agreed and suggested removing the commas around "his or her."

Subject to the requested modification and on the motion of Commissioner Bunn, which was seconded by Commissioner Long, the Commission unanimously voted to release the Final Report on this subject.

School District of Residence

In *Bd. of Educ. of Twp. of Piscataway v. New Jersey Dept. of Educ.*, the Appellate Division considered whether a municipal government was obligated to provide funding for its students enrolled in charter schools located in other school districts. Chris Mrakovcic explained that the decision turned on the meaning of "school district of residence," which is not defined in the Charter School Program Act (CSPA). The trial court determined that the term "school district of residence" was ambiguous and noted that this term could be confused with the definition of "district of residence" that is found in the New Jersey Administrative Code.

In the unpublished decision *Highland Park Bd. of Educ. v. Hespe (Highland Park I)*, No. A-3890-14 (App. Div. 2018), the Appellate Division established that the term "school district of residence" refers to the district in which the student resides and not the district in which the charter school is located. In *Piscataway*, the Appellate Division arrived at the same conclusion.

A proposed addition to N.J.S. 18A:36A-12 adds a subsection defining the term "school district of residence" as "the school district in which a student resides." The proposed amendment also divides subsection b. into seven parts, each containing an individual payment requirement. Although subsections a. and c. were deleted by amendment in 2007, the subsections were not proposed to be re-lettered because subsection b. is explicitly referenced in N.J.S. 18A:36C-7.1.

Chairman Gagliardi observed that in the third paragraph of executive summary and the first line of the analysis section there is a reference to whether or not a "municipal government" is obligated to provide funding. He noted that in both instances the reference should instead be to "local board of education." The Chairman also mentioned that though this statutory section is known as "school district of residence," the term "residence" is a misnomer because a student can

have multiple residences but only one domicile. The child's domicile corresponds to the right to an education, and the district of domicile bears the responsibility to the student. He suggested that the definition in subsection f. should read "[f]or purposes of this section, school district of residence means the school district in which the student is domiciled."

Commissioner Bunn stated that he would prefer that the proposed statutory modifications include the elimination of subsections that have been repealed by the Legislature, and asked Staff to remove the statutory references to the repealed items and include the modification of the statute that refers to N.J.S. 18A:36A-12. Chairman Gagliardi agreed.

Commissioner Bell proposed that subsection b. be modified to include the following language, "[f]or each student who is domiciled within the school district, the district shall pay the following directly to the charter school." He proposed beginning subsection b. with the obligation to students who are domiciled within the school district.

Commissioner Long asked whether a minor can have a domicile other than one chosen by the custodial parent. Chairman Gagliardi responded that the law has been modified recently to allow divorced parents who share custody to identify either of their domiciles as the domicile of the child.

Commissioner Bell questioned whether the statute needs to address circumstances where New Jersey children attend charter school out of state. Chairman Gagliardi replied that generally, this would only occur if there were a court order or intervention from Department of Education related to the out-of-state placement of a student with special needs. He continued that there is a separate statute that focuses on cross-border education.

Commissioner Bell and Commissioner Bunn suggested that the preamble to subsections (1) - (7) should be revised to include "as applicable."

The Commission will reexamine revised language at an upcoming meeting.

Workhouse

At the December 17, 2020 Commission meeting, Staff was authorized to conduct additional research regarding the types of county institutions in which a defendant may be imprisoned, with specific references to the term "workhouse." Amid a state and national move to reexamine statutory terms rooted in systemic racism, the presence of this term in New Jersey statutes is of concern since it ties back to the oppressive ideals of its colonial-era origins, which supports a recommendation for its elimination from the statutes.

Mr. Silver briefly explained, that at the previous meeting the Commission considered the history and origins of this term dating back to 1748, Middlesex County as well as its use throughout

the New Jersey statutes. In 1976, all powers and duties of the Commissioner of Institutions and Agencies with respect to all county workhouses were transferred to the Department of Corrections.

The term “workhouse” is not defined in any New Jersey statutes, but it appears in 53 statutes spanning 12 titles. The Appendix to the Report recommends “county correctional facility,” which is defined to include the workhouse, as a replacement for the term “workhouse.” The Appendix also contains cross-references to other projects in which the Commission has recommended statutory modifications that relate to the “Poor Laws,” “Magistrate,” and “Misdemeanor,” which have been incorporated.

Commissioner Bell noted that, on page 26, regarding N.J.S 38:42, the wage paid to prisoners is extremely out of date and recommended highlighting that in the comments that follow the statute. Chairman Gagliardi agreed and stated that although this is not a problem the Commission is authorized to solve, it should be pointed out in the Report.

Chairman Gagliardi also suggested that the comment language on the top of page 24 should be corrected to make it consistent with the language in other similar comments, removing an errant "ed" from "repeal." Commissioner Bertone suggested a correction to the executive summary, second paragraph, third line, to insert the word “of” after “presence”.

Subject to the modifications requested by the Commission, and on the motion of Commissioner Bertone, which was seconded by Commissioner Bunn, the Commission unanimously voted to release the Tentative Report on this subject.

Local Government Ethics

Samuel Silver discussed a Draft Tentative Report pertaining to the Local Government Ethics Law (LGEL). The LGEL was enacted to provide local government officials and employees with uniform, statewide ethical guidance. To further this objective, a code of ethics was enacted within the LGEL.

In the case of *Mondini v. Local Fin. Bd.*, 458 N.J. Super. 290 (App. Div. 2019), the Appellate Division considered whether the Executive Director of a regional sewerage authority violated the section of the LGEL prohibiting the use of one’s official position to secure unwarranted privileges. In the wake of Superstorm Sandy, the Executive Director commandeered gasoline from a gas station and food for employees to keep the authority functioning and prevent millions of gallons of raw sewage from being discharged into the Rockaway River. A Commissioner used some of the commandeered fuel for his personal vehicles.

The LGEL prohibits seven types of conduct. N.J.S. 40A:9-22.5(c) specifies that no local government officer or employee shall use or attempt to use his official position to secure unwarranted privileges or advantages for himself. The Appellate Division reviewed contemporaneously enacted statutes, noting that subsections f. and g. use language “for the purpose

of” not used in subsection c. It rejected the argument that “public perception of impropriety” can serve as a basis for a violation of subsection c.

Mr. Silver explained that the Appendix to this Report contains two options for reforming the statutory language. The first option follows the holding of *Mondsini* by incorporating the phrase “with the intent” into the statute. The second option utilizes the language “for the purpose of” which is also found in subsections f. and g. and also conveys the holding in *Mondsini*.

Chairman Gagliardi asked which option the Commissioners preferred. Commissioner Long said that she preferred option number two because it contains language that parallels the language of adjacent subsections. Chairman Gagliardi concurred. The Chairman asked whether the proposed language “himself/herself” should be changed to “themselves.” Commissioner Long said that she was satisfied with the language as set forth in the Appendix.

Commissioner Bell stated that option one “intent” includes purpose or knowledge, whereas option two requires only purpose. Commissioner Bunn agreed, noting that option two is narrower than option one. John Cannel offered that “intent” and “purpose” are interchangeable in the Code of Criminal Justice, and that “with knowledge” could be another option. Commissioners Bunn and Long agreed.

Commissioner Bunn inquired about the goal of the statute, asking whether it sought to punish an individual whose primary goal was to prevent disaster, while not focusing on an incidental private benefit to an employee. Mr. Cannel said that the term “knowledge” would involve a stricter standard than “purpose.” Commissioner Rainone said that a violation of the LGEL could be charged as a crime, and that a criminal standard should not be used in this situation. Mr. Cannel suggested that in the context of an ethics statute, the use of “purpose” was appropriate.

Commissioner Bunn proposed a hypothetical in which a public official took a hammer to a locked gas pump to obtain gasoline necessary to power the equipment that would stop a flood. In this context, he observed, the word “purpose” is appropriate because the aim is to stop the flooding notwithstanding any advantage to an employee who may use the gas from the pumps for personal reasons. Commissioner Long said that the statute’s purpose is not to punish people acting in good faith to benefit the public, and reiterated her support for option number two. Commissioner Bell noted that the plaintiff in *Mondsini* would be fine under either option because she has no knowledge of the third party’s behavior, adding that he preferred option number 2.

On the motion of Commissioner Bunn, seconded by Commissioner Long, and with the selection of option number two, the Commission released the Report as a Tentative Report.

Alimony Modification

N.J.S. 2A:34-23(j)(2) permits modification of alimony in anticipation of prospective retirement. The statute, however, does not prescribe the time period for filing such an application. This issue was addressed by the Court in *Mueller v. Mueller*, 446 N.J. Super. 582 (2016).

In *Mueller*, Plaintiff agreed to pay the Defendant permanent alimony but the Marital Settlement Agreement (MSA) between the parties was silent on the issue of alimony support obligation and its relation to retirement. Pursuant to section (j)(2) of the alimony statute, the Plaintiff sought a court order that would prospectively terminate his alimony obligation upon his retirement in five years. The Chancery Division determined that the Plaintiff's application was premature.

The Court concluded that a reasonable interpretation of section (j)(2) is "one that allows the court to order a modification or termination of alimony in advance of retirement when the prospective retirement will take place in the near future, rather than many years after the actual application, and the applicant presents a specifically detailed, proposed plan for an actual retirement, as opposed to a non-specific, general desire to retire someday." The Court suggested that the Plaintiff's application would have been more suitable if it had been sought closer to the obligor's retirement date.

Arshiya Fyazi explained that Staff had been authorized by the Commission to contact matrimonial and elder law attorneys to ascertain whether amending the statute to include a time frame for filing an application to modify alimony obligation based on prospective retirement would be beneficial to practitioners and their clients. She advised that she contacted various individuals specializing in family law, including members of the New Jersey State Bar Association.

According to one member of the Family Law Section of the NJSBA, establishing a prescribed time-period for filing an application for prospective retirement would be "too arbitrary." Instead, courts should handle the applications on case-by-case basis because they tend to be fact sensitive. An applicant should be allowed to file depending on his or her circumstances and, if the Court deems it premature, it can be denied without prejudice, allowing the applicant to refile.

Comments received from another practitioner specializing in matrimonial law stated that there might be a benefit to establishing a timeframe for filing such an application since doing so would allow litigants to predict their expenses as they prepare for retirement. The commenter explained that section (k) of the alimony statute, which discusses unemployment as a change in circumstance and allows for a 90-day window before an application can be filed, could be used as a model. An application can be made in advance, with a provision that any modification or termination would not go into effect until actual retirement is verified. The commenter cautioned that courts are reluctant to make decisions based upon speculative future events since unforeseen issues such as health conditions or financial circumstances of the parties may change between the time the order is entered and the retirement of the obligor.

A fifty-state survey confirmed that no other state specifies a timeframe by statute within which an application may be filed for alimony modification based on changed circumstances or prospective retirement. The case law from other jurisdictions indicates that courts require a showing that retirement or a change in circumstances of the payor occurred prior to filing an application, or that retirement is imminent. Since *Mueller* was decided in 2016, no other New Jersey case has addressed the issue of filing an advance motion for alimony modification based upon a party's prospective retirement.

In the current legislative session, there are five bills that seek to amend N.J.S. 2A:34-23; none of them address the time when a litigant may file an application to modify alimony based on prospective retirement.

Commissioner Bunn noted that although the courts have significant discretion in this area of law, any modification to the existing statute based on *Mueller* should consider the timing of the application in relation to the individual's retirement. Commissioner Rainone opined that such language would invite litigants to seek advisory opinions. He posited a situation in which a litigant files an application for alimony modification and the resulting decision determines how the litigant then chooses to behave. Commissioner Bunn asked whether the current statute already has that effect, suggesting that a modification to the statute could provide courts with a way to avoid advisory opinions.

Chairman Gagliardi pointed out that other states do not include deadlines, and asked Ms. Fyazi whether or not the research results explained why. She replied that she had seen no explanation given for the fact that only one jurisdiction sets a six-month timeframe within which to file and no state established an absolute deadline. Commissioner Long noted that no other case has addressed this issue, either before or after *Mueller*, and suggested that this case did not necessarily indicate a problem with the statute. Commissioner Bell stated that the project was worth pursuing, and that the Commission could provide guidance regarding what an application should contain. He opined that doing so would respond to the desire of parties to plan for retirement. He added that two years was a reasonable time within which to seek a declaratory judgment as to how much longer an applicant must continue working, recognizing that other states have not acted in this area.

Commissioner Bunn noted that the current statute allows for this type of scenario, and that he is wary of including specific time frame. He concluded that the Commission should allow case law to develop. Commissioner Bertone agreed, adding that this type of situation is commonly addressed in marital separation agreements, which might explain the paucity of reported cases. Commissioner Bell agreed. The Commission unanimously agreed to conclude its work in this area.

**Uniform Recognition and Enforcement of
Canadian Domestic Violence Protection Orders Act**

Jennifer Weitz discussed a Memorandum concerning the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act (RECDVPOA). The Canadian government has granted recognition of protective orders issued in the United States through the Uniform Enforcement of Canadian Judgments and Decrees Act (UECJDA). The RECDVPOA would grant similar recognition to orders of protection issued by Canadian courts.

Staff reviewed the RECDVPOA and compared it with the federal Violence Against Women Act (VAWA) and New Jersey's Prevention of Domestic Violence Act (PDVA).

The Legislature sought, by enacting the PDVA, "to assure victims of domestic violence the maximum protection from abuse the law can provide." Under the full faith and credit provision of VAWA, a victim of domestic violence who resides in New Jersey can enforce a protective order issued by a New Jersey court, or any court in this country; however, no mechanism exists for enforcement of a protective order from Canada.

The RECDVPOA mirrors the UECJDA by focusing on the immediate threat of domestic violence. It does not, however, include any provisions relating to custody or visitation. The RECDVPOA recognizes a Canadian domestic-violence protection order that prohibits a respondent from being near or following a protected individual, directly or indirectly contacting a protected individual or others described in the order, being within a certain distance of a location associated with a protected individual, or molesting, harassing, or engaging in threatening conduct directed at a protected individual.

These protections are akin to those found in the PDVA. Additionally, both the RECDVPOA and the PDVA provide immunity for law enforcement personnel acting in good faith to enforce protective orders, and both contain due process protections for individuals named in a protective order. The RECDVPOA has been enacted in six states since its release. Although the Legislature has been active in the field of domestic violence prevention, it has yet to address the issue covered by the uniform law.

Commissioner Bunn stated that the Commission should work to address this issue. Chairman Gagliardi agreed and Staff was authorized to continue its work in this area.

Mistaken Imprisonment

In *Kamienski v. State Department of Treasury*, 451 N.J. Super. 499 (App. Div. 2017), the Appellate Division considered the provisions of the Mistaken Imprisonment Act, N.J.S. 52:4C-1 to -7, and what it described as "questions of first impression" concerning eligibility, the burden of proof, damages, and reasonable attorney fees recoverable under the Act. The Appellate Division determined that certain language in the statute was susceptible to more than one interpretation and noted that the Act is both "remedial legislation and, in part, a waiver of sovereign immunity," a point that brings conflicting standards of construction into play.

Although modifications to the statutory language concerning damages addressed certain issues raised by the plaintiff, additional clarification of the statutory language may be of assistance in interpreting the provisions concerning an attorney fee award, and whether an individual may bring suit under the act while incarcerated.

John Cannel explained that based upon the statutory history of this Act, an incarcerated individual cannot bring an action for mistaken imprisonment while they are in prison. Commissioner Long questioned whether an individual who was wrongfully imprisoned for twenty years, was then released, and thereafter rearrested would ever be compensated under Mr. Cannel's reading of the statute. Mr. Cannel replied that, as drafted, the statute stated that this individual would have to wait until he was released to commence his action. Commissioner Long questioned why. Commissioner Bunn said that perhaps the Legislature did not want to make the statute a vehicle for prisoner litigation. He also stated that the Commission should endeavor to answer Commissioner Long's inquiry. Laura Tharney raised the potential fiscal impact of modifying that statutory language.

Mr. Cannel said that interpreting the statute becomes more complicated in instances of individuals who are given consecutive sentences. Commissioner Bunn stated that he was concerned about instances in which the Court does not specify the order of a defendant's sentences. In addition, he noted that the purpose of the statute is to compensate an individual who has been mistakenly imprisoned by the State. Chairman Gagliardi opined that although there has been a slow erosion of sovereign immunity over the past several decades, the statutory requirements for compensation pursuant to this Act are so rigorous that even if the Commission were indulgent in its reading of the statute it would be very difficult for an individual to successfully litigate such a claim.

Commissioner Bunn suggested that Staff examine the statutes of other states to determine whether they would assist the Commission in analyzing this subject.

Disability Benefits After Leaving Employment

N.J.S. 43:15A-42 allows eligible members of the Public Employees' Retirement System (PERS) to receive ordinary disability retirement benefits, or ODRB, so long as they meet service credit minimums. The statute, however, is silent regarding the eligibility of an employee who leaves public sector service prior to becoming disabled but retains membership in PERS. That question was addressed by the Appellate Division in *Murphy v. Bd. of Tr., Pub. Emp.'s Ret. Sys.*, 2019 WL 1646371 (App. Div. 2019).

The petitioner began employment with the Wall Township Board of Education in 1999. In 2006, she was terminated from her employment. She was reinstated in 2009 after a successful unfair labor practice charge, and was awarded back pay. In 2012, the petitioner signed a settlement agreement with her employer, ending her employment in exchange for \$485,000. She obtained work in the private sector, but maintained her membership in PERS.

In 2013, the petitioner became totally and permanently disabled. She applied to PERS for disability benefits under the statute. PERS denied the application and the petitioner appealed and the case was transferred to an administrative law judge for resolution. The petitioner argued that she was eligible for benefits under the text of the statute because “it was not disputed she was still a member of PERS, under sixty years of age, had provided over ten years of service for the State, and was totally and permanently disabled when she applied for ODRB benefits.” PERS argued that the petitioner was not entitled to benefits because she did not have the disability when she resigned from her public sector employment. The ALJ found in favor of the petitioner, noting that the text of the statute does not require a claimant become disabled from public sector employment in order to receive benefits.

The Appellate Division reversed. The Court found that the statute is ambiguous and determined that the phrases “for the performance of duty” and “should be retired” indicate a Legislative intent that the performance of duty be for a public sector entity. The Court cited the PERS rehabilitation statute, which requires an employee who recovers from a disability to return to public sector service. Taken together, the Court held that an employee must be disabled from public sector employment in addition to the other eligibility requirements listed in the statute in order to receive ordinary disability benefits.

Commissioner Long began the discussion by asking what it meant that petitioner “maintained her membership in PERS” after she began working in the public sector. Commissioner Bertone agreed that this seemed odd. Laura Tharney explained that it seemed as though the petitioner, with ten years of service, was vested and entitled to a pension, but was not yet of an age to collect it. Chairman Gagliardi concurred. Commissioner Rainone asked whether a member who retired in 2007 and became disabled in 2016 would be entitled to disability; suggesting that it was odd that an individual who was not an active member of PERS would be eligible to collect disability. Chairman Gagliardi, Commissioner Long, and Commissioner Rainone all agreed that the statute should reflect the Appellate Court’s holding in *Murphy*. Staff was authorized to proceed with work on this subject.

County Committee

Samuel Silver discussed a Memorandum proposing to clarify the standards for election of an individual to a county committee as set forth in N.J.S. 19:5-3 and discussed in *Hartman v. Covert*, 303 N.J. Super. 326 (Law. Div. 1997) and *Central Jersey Progressive Democrats v. Flynn*, MER L 000732-19, slip op. at 2 (Law Div. 2020).

The requirements that the election of county committee members and the selection of the committee chair and vice-chair be based upon gender are embedded in New Jersey’s election statute §19:5-3. The original purpose of this law was to “equalize opportunity between the genders in the political forum and to encourage women’s involvement in politics.” In recent years, the efficacy of these provisions has been called into question by those seeking political office.

In *Hartman v. Covert*, a candidate challenged the election of the chair and vice-chair that resulted in two women filling those positions. The trial court determined that the statute restricting positions of political party committee chair and vice-chair to persons of opposite genders, N.J.S. 19:5-3, was unconstitutional because it burdened the associational rights of parties and their members

Twenty-three years after the *Hartman* decision, the constitutionality of N.J.S. 19:5-3 was questioned again. In *Central Jersey Progressive Democrats v. Flynn*, the Plaintiffs sought to compel the Middlesex County Clerk to prepare primary ballots that called for the election of two “committeepersons” rather than distinguish the candidates based upon their gender. The Court held that the current statute violates the freedom of association and impermissibly discriminates on the basis of gender and determined that all future ballots in Middlesex County, are to be prepared without regard to gender. Mr. Silver noted that this statute also makes it impossible for an individual who identifies as non-binary to hold the office.

As originally enacted in 1930, each county committee was required to consist of one male and one female member from each unit of representation in the county. The 1930 statute, did not, however, contain a reference to the gender of the committee chair or vice-chair. Rather, the statute referred to a “chairman,” requiring the selection of a man who would preside over the meetings of the committee. In 1955, N.J.S. 19:5-3 was amended to provide for the election of women to a leadership role within each county committee. Although women were not statutorily eligible to serve as the leader of the committee, the members were required to elect a “vice-chairlady” to hold office for a period of one year. In 1964, reference to “chairman” and “vice-chairlady” was eliminated from the statute and the positions were required to be filled by individuals of the opposite gender. In the years that followed, the county committee statute was modified twelve times, but the gender requirements remained unchanged.

Mr. Silver mentioned a recent news story explaining that the French government fined the Parisian government \$110,000 because eleven of sixteen top officials hired in 2018 were women. A 2012 Parisian law aimed at boosting the number of women in top civil service roles provided that one gender could account for no more than sixty percent of new hires in a given year. Mayor Hidalgo, the first woman mayor of Paris, said that she would gladly pay the fine and was quoted as saying, “I am going to rejoice that we have been sentenced to pay a fine. To promote and one day reach gender equality, we must pick up the pace and ensure that more women are appointed than men.” The Public Service Minister who administers the fine had said that she would use the fine to fund concrete actions to promote women civil servants.

Commissioner Rainone found the project to be worthwhile and straightforward. Commissioner Bell agreed with Commissioner Rainone and noted that there is a big constitutional

issue here that should be addressed. However, he expressed concern regarding whether modification of the statute might have an adverse impact on female participation and whether such participation will decrease. Mr. Silver noted that in the recent case of *Central Jersey Progressive Democrats v. Flynn*, each of the plaintiffs were women.

Commissioner Bunn asked whether the Legislature should make the change because they are in the best position to have hearings and determine what the impact of modifying the statute would be and to determine the policy of the State. Chairman Gagliardi concurred with Commissioner Bunn's comments, and added that there is a rational argument that if this requirement is taken away, the progress made in some counties will dissipate very quickly. Any modification suggested by the Commission may be seen as stripping away the guarantee for women in county committees.

Commissioner Bunn stated that many women have used the county committee as a steppingstone into politics and higher office. Chairman Gagliardi stated that identifying the problem is far different than actually recommending a specific course of action. He suggested two options; either do nothing or identify the problem as potential constitutional issue to the Legislature that needs to be remedied. Commissioner Long suggested that, as the statute stands, transgender and non-binary people will not be permitted to hold these offices, precluding an entire class of citizens. Commissioner Rainone described that as a legitimate argument that should be addressed by the Legislature.

Chairman Gagliardi stated that the Commission has concern about the way the statute is constructed – in some cases impacting rights of a certain group of people and in some cases denying them entirely. Staff was authorized to draft a report designed to bring these various constitutional concerns to the attention of the Legislature.

Annual Report

Laura Tharney advised the Commission that, subject to non-substantive revisions correcting any typographical and other errors, the Annual Report is completed and she sought authorization from the Commission to release the Annual Report so that it may be distributed to the Legislature on or before February 01, 2021.

Subject to non-substantive revisions and on the motion of Commissioner Long, which was seconded by Commissioner Bell, the Commission unanimously voted to release the 2020 Annual Report.

Miscellaneous

Ms. Tharney advised the Commission that the NJLRC is currently working with a total of four students. During the Spring semester of 2021, two students from the New Jersey Institute of Technology will be working with the Commission Staff on various projects and case reviews. In

addition, the Commission will be assisted by two Legislative Law Clerks from the Rutgers Law School Camden campus.

On January 21, 2021, Ms. Tharney attended the Senate Commerce Committee hearing during which both the Senate and Assembly bills concerning the Uniform Voidable Transactions Act were reported from the Committee with amendments.

Adjournment

The meeting was adjourned on the motion of Commissioner Bunn, and seconded by Commissioner Long.

The next Commission meeting is scheduled to be held on February 18, 2021, at 4:30 p.m.