

MINUTES OF COMMISSION MEETING

October 20, 2022

Present at the New Jersey Law Revision Commission meeting, held at 153 Halsey Street, 7th Floor, Newark, New Jersey 07103, were: Chairman Vito A. Gagliardi, Jr.; Vice Chairman Andrew O. Bunn; Commissioner Virginia Long; Professor John K. Cornwell, of Seton Hall University School of Law, attending on behalf of Commissioner Kathleen M. Boozang; and Grace Bertone, of Bertone Piccini, LLP, attending on behalf of Commissioner Kimberly Mutcherson.

In Attendance

Jim Hunt, a member of the New Jersey Bike/Walk Coalition; and Kayla Rowe, Counsel to the New Jersey Civil Justice Institute were in attendance.

Minutes

The Minutes of the September 15, 2022, meeting were unanimously approved by the Commission, on the motion of Vice Chairman Bunn, seconded by Commissioner Long.

Personal Conveyance

Samuel Silver discussed with the Commission a Revised Draft Final Report recommending modification of N.J.S. 39:4-92.4 to clarify the definition of the term “pedestrian” and to define the term “personal conveyance” to eliminate potential ambiguity.

Mr. Silver explained that N.J.S. 39:4-92.4 was enacted in August of 2021, to protect pedestrians and “vulnerable road users” from the possibility of being injured by motor vehicles while using New Jersey roadways.

Mr. Silver stated that over the past year, he has had the privilege of working with William Yarzab, Street Smart New Jersey Coordinator; Jim Hunt, from the New Jersey Bike/Walk Coalition; and Sergeant First Class David Guinan, from the New Jersey State Police Safe Corridor Unit. Mr. Silver stated that each stakeholder has been very patient with Staff’s work, kind with their comments, and thoughtful with each suggestion to protect the vulnerable users of New Jersey’s roadways and improve the statute for the benefit of all road users.

Persons who travel on roadways as a pedestrian, a bicyclist, or the operator of a personal conveyance, expose themselves to dangers that are not faced by the operators of motor vehicles. Out of concern for their own safety, a pedestrian, a cyclist, or the operator of a personal conveyance may elect to utilize the shoulder of a roadway during the course of their travels.

During the September 2022 meeting of the Commission, a member of the public asked the Commission to examine whether N.J.S. 39:4-92.4 could be extended to include the protection of

pedestrians, cyclists, and individuals operating personal conveyances on the shoulder of a New Jersey roadway.

With the Commission's authorization, Mr. Silver examined the case of *Polzo v. County of Essex*, 209 N.J. 51 (2012). In *Polzo* the New Jersey Supreme Court considered whether a county could be held liable for the fatal accident that occurred when a person lost control of her bicycle while riding across a depression on the shoulder of a county roadway. The Court noted that in New Jersey, a cyclist is vested with all the rights and duties applicable to the driver of a vehicle under Title 39, chapter four of the Motor Vehicle Code. Those who operate a bicycle on a roadway are required to ride as near to the right side of the roadway as practicable. The Court also stated that a bicycle rider is directed to ride on the furthest righthand side of the roadway, not the roadway's shoulder, which the Motor Vehicle Code does not designate as a bicycle lane. In affirming summary judgment in favor of the defendant, the Court opined that bicyclists do not have special privileges on a roadway's shoulder.

The New Jersey Legislature has enacted a Motor Vehicle Code that vests bicyclists, roller skaters, and skateboarders with all of the same rights and duties applicable to the operators of motor vehicles. To include a reference to the shoulder in subsection b. of N.J.S. 39:4-92.4 would endow the enumerated groups with "special privileges" to utilize the roadway's shoulder in a manner that does not appear to be consistent with either the intent of the Legislature or the decision of the *Polzo* Court. Mr. Silver stated that Staff does not recommend the inclusion of the term "shoulder" in N.J.S. 39:4-92.4.

Mr. Silver advised the Commission that after the September 2022 meeting, Senator Declan J. O'Scanlon, Jr., introduced S3008. This bill would revise the requirements for motor vehicle operators when overtaking pedestrians, bicyclists, and scooter riders in certain circumstances. Mr. Silver noted that the bill would require bicyclists, low-speed bicycles, and scooters to keep to the right while on a roadway. The bill also defines personal conveyance to include lawful personal conveyances not defined in subsection a. that are located or operated in an area designated for pedestrians or an area designated for that personal conveyance.

The proposed legislation, in subsection b. would eliminate the requirement that motorists initiate a lane change to a non-adjacent lane to the one occupied by a bicycle, low speed electric bicycle, or scooter. Instead, when overtaking a bicycle, they would be required to leave a reasonable safe distance unless devices are being operated in a designated bicycle path. The reasonable safe distance requirement would also be applied to pedestrians and personal conveyances. The proposed bill would also eliminate the current enumerated requirements for overtaking vulnerable road users and allow a motorist to pass in a no passing zone when it is safe to do so.

Finally, in subsection c. the proposed legislation introduces a condition precedent that a motor vehicle must be more than fifty percent at fault for bodily injury as determined by a court of competent jurisdiction before being fined \$500 and being given two motor vehicle points. Mr. Silver noted that which court is of competent jurisdiction to hear and make such a determination is not set forth in the proposed bill.

Jim Hunt, from the New Jersey Bike/Walk Coalition advised the Commission that he believes that bicyclists and pedestrians should have the ability to utilize the shoulder. He noted, however, that *Polzo* governs this area of the law. Mr. Hunt also noted that it is unclear whether the presence of a directional arrow on the roadway transforms a shoulder into a bicycle lane. He thanked the Commission and Mr. Silver for their work to revise the statute to include changes that strengthen the law. The Commission's focus on protecting people and not objects is a position that his organization can support.

Commissioner Long asked that in the Appendix to the Report that a comma be placed in the title between the words "pedestrian" and "bicycle" to correct a typographical error. This modification was supported by Commissioners Bunn, Bertone and Cornwell.

On the motion of Commissioner Cornwell, seconded by Commissioner Bunn, the Commission unanimously agreed to release the Final Report, as amended by Commissioner Long.

Receivership Act

Whitney Schlimbach discussed with the Commission a Revised Draft Final Report proposing modifications to N.J.S. 2A:42-117, changing the language from mandatory to permissive as discussed in *Manufacturers & Traders Trust Company v. Marina Bay Towers Urban Renewal II, LP*, 2019 WL 5395937 (App. Div. 2019).

The statutory language addressing the appointment of a receiver in N.J.S. 2A:42-117 was discussed in *Manufacturers*. The Appellate Division determined that a trial court has the discretion to appoint or deny a receiver when conditions in N.J.S. 2A:42-117 exist. The Commission issued Tentative Report in October of 2021. This Report included the modification of the statute to reflect the holding of the *Manufacturers* court.

During its February 17, 2022, meeting the Commission observed that other language in N.J.S. 2A:42-117 implied the court only considers the plaintiff's evidence when deciding whether to appoint a receiver. The language of the statute provides that a determination about receivership is "based upon evidence provided by the plaintiff." The Commission authorized Staff to conduct additional research to clarify the meaning of this language and to determine whether the statute would benefit from any additional modifications.

Regarding the discretion to appoint or deny a receiver, the *Manufacturers* court reviewed legislative history and language in related statute, section 123, in Act, which also addresses the appointment of a receiver but employs permissive language. The court determined that the language in N.J.S. 2A:42-117 should be read permissively. In addition, Staff reviewed language in other statutes in the Act and found the court's powers related to a receivership are described permissively with few exceptions.

To determine what evidence a court may consider when deciding whether to appoint a receiver, Staff examined the remaining language in the Act, other New Jersey statutes and the New Jersey Court Rules. Other statutes in Act provide procedures for notice to adverse and interested

parties and for the presentation of arguments and evidence in support of, or in opposition to, receivership. The language used in N.J.S. 2A:42-117 is not used in any other New Jersey statute authorizing, or even requiring, summary actions.

Ms. Schlimbach advised the Commission that New Jersey Court Rule 4:67 sets forth procedures governing summary actions when authorized by statute. She explained that there are two circumstances in a summary action in which a court may proceed *ex parte*. The first is set forth in Rule 4:67-1(a) and the second is found in Rules 4:67-4 and -5. Ms. Schlimbach also noted that the language in N.J.S. 2A:42-117 does not refer to either circumstance.

The language “based upon evidence provided by the plaintiff,” should not be read to limit the type of evidence presented to only that of the plaintiff when determining whether to appoint a receiver. Ms. Schlimbach advised the Commission that the narrow and specific circumstances in which a court may proceed *ex parte* under the New Jersey Rules of Court are not referenced in the statute. In addition, the procedures set forth in Act indicate that adverse and interested parties receive notice of the action and are given the opportunity to present arguments and evidence.

Ms. Schlimbach advised the Commission that there is no pending legislation that addresses N.J.S. 2A:42-117.

The first proposed modification is set forth in the last paragraph of the statute and replaces the word “shall” with “may,” consistent with the holding in *Manufacturers*. This modification is intended to clearly signal to the reader that the statute is intended to be permissive. Next, the proposed modifications eliminate the language “based upon evidence provided by the plaintiff” to make clear that courts should not only consider the plaintiff’s evidence in receivership cases. Finally, the proposed modifications divide the statute into lettered and numbered subsections to improve accessibility and readability, and internal cross-references are modified to reflect the changes.

The Revised Draft Tentative Report was sent to the same entities that were asked to comment on the Draft Tentative Report. In addition, the Revised Draft Tentative Report was also sent to the New Jersey Office of Legislative Affairs and the Division of Codes and Standards in the Department of Community Affairs; private practitioners in the Real Estate and Multifamily Housing Practice at Hyland Levin Shapiro LLP; Director of the Community and Economic Division of La Casa De Don Pedro, a Newark-based non-profit organization; Housing Advocacy Organizer with the National Low Income Housing Coalition; Director of Special Projects and Local Government Relations and the Multifamily Project Manager with the Community Asset Preservation Corporation.

In addition, Willard Shih, Esq., of Wilentz, Goldman & Spitzer, PA, indicated his support for the project. He stated that “the appointment of receivers in many other contexts in New Jersey law is subject to the discretion of the court, and a court should have the same discretion when it comes to rehabilitation of multifamily buildings that have fallen into disrepair.”

Commissioner Long expressed her support for the project and stated the this was a perfect Commission project that was perfectly done.

On the motion of Commissioner Bertone, seconded by Commissioner Bunn, the Commission unanimously agreed to release the Final Report.

Impact of Mail-In Ballots on Election Contest Claim

In New Jersey a person may contest an election pursuant to N.J.S. 19:29-1 by asserting that the number of legal votes rejected was sufficient to change the result of an election. By contrast the Vote By Mail Law, in N.J.S. 19:63-26, directs that an election “shall not” be held invalid due to irregularities or failures in the preparation or forwarding of mail-in ballots. The conflict between these two statutes formed the basis of Whitney Schlimbach’s discussion with the Commission of a Draft Tentative Report to resolve this conflict.

In re the Election for Atlantic County Freeholder District 3 2020 General Election involved an election contest claim based on defective mail-in ballots. The Appellate Division considered the impact of the prohibition in N.J.S. 19:63-26 on a vote-by-mail election contested pursuant to N.J.S. 19:29-1. The *Atlantic County Election* case involved the November 2020 election for Third District Commissioner. The unsuccessful candidate (Parker) contested the election because many voters received mail-in ballots that did not include the Third District Commissioner election, although they were entitled to vote in it. The successful candidate won by 286 votes and there were 355 defective ballots.

Parker argued the defective ballots prohibited voters from voting for the “candidate of their choice” and therefore that the defective ballots were rejected legal votes sufficient to change the outcome of the election pursuant to N.J.S. 19:29-1(e). The election winner argued that N.J.S. 19:63-26 does not permit an election to be invalidated due to irregular mail-in ballots, superseding 19:29-1. The trial court determined that the defective ballots were “rejected legal votes” and “found Parker met his burden to set aside the election” pursuant to N.J.S. 19:29-1(e).

The Appellate Division stated that election laws are to be liberally construed and found the defective ballots were “rejected votes” under NJS 19:29-1(e). The court then addressed whether N.J.S. 19:63-26 barred a claim under N.J.S. 19:29-1(e) when the election is vote-by-mail. The Court determined that the Legislature did not intend to eliminate the ability to contest an election pursuant to N.J.S. 19:29-1 merely because the vote occurred by mail. The Court held that N.J.S. 19:63-26 establishes a presumption of validity when there is an irregularity or failure in the preparation or forwarding of mail-in ballots, that may be rebutted by asserting one of the grounds in N.J.S. 19:29-1 as a basis to invalidate the election.

In re Contest of the Nov. 2, 2021 Gen. Election for the Old Bridge Twp. Comm., Fourth Ward involved a candidate for the Fourth Ward seat on the Old Bridge Township Committee, who lost by eleven votes. His contest claim was based on an error in the Statewide Voter Registration System (SVRS). On the street dividing Second and Fourth Ward, the even-numbered side of street

should have voted for Fourth Ward candidates but were sent ballots and directed to polling locations to vote for Second Ward candidates based on erroneous information in the SVRS.

The Superior Court noted the rebuttable presumption in N.J.S. 19:63-26 and concluded that the SVRS error deprived seventeen voters on the even-numbered side of the street of the opportunity to vote for the candidate of their choice. The court held that the petitioner demonstrated by a preponderance of the evidence that seventeen votes were wrongfully rejected in violation of N.J.S.A. 19:29-1(e). Therefore, the court was “unable to determine with certitude who won the election for the Fourth Ward Township Committee seat” and set aside the election.

Ms. Schlimbach advised the Commission that there is no legislation pending that addresses either N.J.S. 19:29-1 or N.J.S. 19:63-26.

The proposed modifications to N.J.S. 19:63-26 divide the statute into two lettered subsections to improve accessibility. Modifications also add language to clarify that the statute operates as a rebuttable presumption, as held by the *In re Atlantic County Election* court. The proposed language is based on language used in the *Atlantic County Election* opinion that N.J.S. 19:63-26 establishes a presumption that an irregularity or failure in the preparation of forwarding of any mail-in ballot will not invalidate an election, but a contestant may rebut the presumption by asserting one or more of the grounds under N.J.S. 19:29-1 as a basis to invalidate the election.

The proposed modifications to N.J.S. 19:29-1 re-letter and re-number the statute in a manner consistent with current drafting practices. Subsection c. has been added and includes a cross-reference to the rebuttable presumption in N.J.S. 19:63-26, to make clear that the grounds for invalidating an election set forth in N.J.S. 19:29-1 may be asserted to rebut the presumption established by N.J.S. 19:63-26, if applicable.

Commissioner Bell provided Staff and his fellow Commissioners with comments in advance of the meeting. Regarding N.J.S. 19:63-26 he noted that “no election shall be held to be invalid” should be changed to “an election shall not be held to be invalid.” In addition, he would change the word “asserting” to “establishing” in the statute. Regarding N.J.S. 19:29-1, in subsection a., Commissioner Bell recommended that “the voters of this State” be changed to “any eligible voter.” Additionally, Commissioner Bell would add the word “when” to subsection a.(1) and modify “sufficient to change the result” to “is sufficient to cast doubt on the validity of the nomination or election.” Finally, Commissioner Bell suggested that it may be possible to group the eligibility grounds found in subsections a.(2), (3) and (4); or just (2) and (3) and eliminate the phrase “at the polls” in subsection a.(5).

Commissioner Bunn stated that he supported the linguistic changes proposed by Commissioner Bell and suggested in 26a, adding in the word “solely” so that it reads “An election shall not be held to be invalid “solely” due to any irregularity...”. He also stated that he preferred to keep the structure of the statute as set forth in the Appendix.

On the motion of Commissioner Cornwell, seconded by Commissioner Long, the Commission unanimously agreed to release the work, as amended, as a Tentative Report.

Misrepresentation

Mr. Silver presented a Draft Tentative Report addressing the statutes of limitation in the New Jersey Gross Income Tax Act (the Act) related to assessments. Mr. Silver explained that assessments must be made within three years after the taxpayer has filed a return. However, if the taxpayer has filed a false or fraudulent return with the intent to evade tax, the assessment may be made at any time, pursuant to N.J.S. 54A:9-4(c)(1)(B). With respect to refunds, assessments may be made within three years from the issuance of the refund. Under N.J.S. 54A:9-4(c)(4), if the taxpayer has induced the taxing authority to issue the refund through fraud or misrepresentation, the assessment must be made within five years from the refund's issuance.

This issue was brought to Staff's attention by the Tax Court decision in *Malhotra v. Dir. Div. of Taxation*, 32 N.J. Tax 443 (N.J. Tax 2021), and the Commission authorized Staff to examine the phrase "misrepresentation of a material fact" as used in the statute. Mr. Silver provided that *Malhotra* involved taxpayers whose tax returns contained an error which resulted in a refund, but the deficiency notice was sent outside the three-year limitation in the statute. The *Malhotra* Court considered whether any false statement of a material fact, regardless of intent, equaled a misrepresentation and therefore, triggered the five-year statute of limitations. The Court held that misrepresentation of a material fact had to be more than an innocent mistake but less than fraud.

Mr. Silver noted that the phrase "misrepresentation of a material fact" is used in five insurance statutes and four tax statutes, without being defined. The term is defined in Title 51 (lumber and soil amendments) but that definition was not incorporated into the tax statutes when enacted in 1976. In the New Jersey Administrative Code (NJAC), civil fraud is characterized by the taxpayer's intent to evade or avoid the payment of taxes known to be due to the State by conduct intended to conceal, mislead, or otherwise prevent the administration and collection of taxes imposed by state law. Mr. Silver stated that the NJAC also lists thirteen behaviors indicative of fraud, including making a misrepresentation of material facts, as well as examples of errors that are not considered fraudulent. The Internal Revenue Code Manual provides a two-year statute of limitations from issuing an erroneous refund, or a five-year statute of limitations if the taxpayer committed fraud or misrepresented a material fact resulting in a refund. Neither fraud nor misrepresentation are defined by the Internal Revenue Code.

Mr. Silver continued that almost all states, DC and the federal government have a statute of limitations on assessments, ranging from three to ten years, and forty-eight states, including New Jersey, provide that an assessment may be made at any time in the case of a false or fraudulent return. About fifteen states and the federal government have a separate statute of limitations when there has been an erroneous refund, ranging from two to three years. In the case of a fraudulent refund, the majority of states allow an assessment to be made at any time, while nine states and the federal government impose a five-year statute of limitations.

Mr. Silver noted that there are no pending bills addressing this issue, and then turned to the proposed modifications set forth in the Appendix. He explained that there are no proposed modifications to subsection (a). In subsection (c), modifications are proposed that improve the readability of the subsection and in subsection (c)(1)(B), the modifications address instances where the taxpayer filed a false or fraudulent return with the intent to evade taxes and a refund is issued. Mr. Silver asked for guidance from the Commission whether the conflict between the two statutory sections should be reconciled in this manner.

Finally, in subsection (c)(4), Mr. Silver provided two options for the Commission, and potentially the public's, consideration. The first option (Option #1) is divided into additional subsections and retains the bifurcated structure of the original statute. New subsection (c)(4)(B) does not contain any reference to the five-year statute of limitations and replaces the language related to "misrepresentation of a material fact," with language that is consistent with the language in (c)(1)(B) involving the filing of a "false or fraudulent" return.

In the second option (Option #2), the proposed modifications eliminate the reference to fraud because the concept of fraud is addressed in subsection (c)(1)(B) and add language to subsection (c)(1) setting forth a reference to fraud that results in a refund. In subsection (c)(6), the proposed modifications incorporate language from N.J.A.C. 18:2-2.9(d) clarifying that certain errors do not constitute an intent to commit fraud.

Commissioner Long inquired whether the sections governing the statute of limitations for assessments and for refunds were enacted at different times, noting that might give some insight into the Legislative intent. Mr. Silver indicated that Staff would provide that information to the Commission as soon as possible.

Commissioner Bunn expressed concern that the modifications do not provide a definition of "materiality," and predicted that there could be significant litigation over whether is an "error" in a tax return. He explained that a term falling somewhere in between intentional and negligent would be appropriate, suggesting "willful." Commissioner Cornwell responded that his understanding was that the modifications replaced the "materiality" language with the language related to fraud. He noted, however, that using the word "false," raises a mens rea issue, which he thought subsection (c)(6) should address.

Commissioner Bunn pointed out that subsection (c)(6) refers to fraudulent *conduct*, but the prior subsection refers to a false or fraudulent *return*, and that subsection (c)(6) should match the earlier language in the statute. Commissioner Cornwall suggested adding a cross-reference to subsection (c)(6).

Commissioner Bunn raised the additional point that the use of the word "false" raised the possibility that even the most minor error in a tax return could subject a taxpayer to an unlimited statute of limitations. Chairman Gagliardi agreed that the circumstances allowing for an unlimited

statute of limitations must be clearly defined by the statute. He stated that the statute must clearly and carefully define what must be proven and suggested defining both “material” and “willful,” as those distinctions will be critical to determining whether an assessment is time-barred.

Chairman Gagliardi proposed that Staff incorporate the suggestions made by the Commissioners and present the report to the Commission again. Ms. Tharney added that doing so will also permit Staff to resolve Commissioner Long’s inquiry related to the enactment date of the two statutory sections. Commissioner Long agreed, noting that the outcome of that question may assist Staff in determining whether the modifications are appropriate.

Biometric Data Collection

Mr. Silver presented a memorandum discussing the collection of biometric data in the context of the intersection of biometric privacy and workers’ compensation laws. He explained that biometric data consists of “data generated [through the] analysis of an individual’s biological characteristics,” like “retina and iris scans, fingerprints, voice prints,” records of hand or face geometry or other unique biological patterns or characteristics used for identification. Mr. Silver also explained that the rate at which the data is collected and the risk that it is stolen and used inappropriately has led many states to consider its regulation. Only a limited number of states have enacted biometric privacy laws but attempts to legislate in the area are complicated by the speed at which the relevant technology is evolving.

The issue was brought to Staff’s attention by way of an Illinois Supreme Court decision, *McDonald v. Symphony Bronzeville Park, LLC*, No. 126511 slip op. at 2 (Ill. Feb. 3, 2022), in which the Court considered the language of Illinois’ Compensation and Privacy Acts to “determine whether the Compensation Act’s exclusivity provisions bar an employee’s claim . . . for statutory damages under the Privacy Act.” The *McDonald* case involved a technical violation of the Privacy Act that affected a large number of workers who had not received a notice of data collection required under the statute and which resulted in a class action suit.

Mr. Silver noted that New Jersey has no comprehensive data privacy laws. However, Mr. Silver provided that the New Jersey Legislature has been working in this area for twenty years. Beginning in 2002, the Biometric Identifier Privacy Act was introduced every year until 2007. In addition, a bill involving biometric data has been introduced virtually every year since 2002. The Illinois statute, enacted in 2008, was the first in the country, and prompted a wave of litigation, including the *McDonald* case. Three other states have now enacted biometric privacy laws, but only Illinois provides a private right of action. In the first quarter of 2022, seven states introduced biometric privacy laws. The federal Data Protection Act of 2021 is currently pending and would create a Data Protection Agency in the executive branch with the task of regulating high-risk data practices and the collection, processing and sharing of personal data to prevent and remediate privacy harms.

The American Law Institute (ALI) issued “Principles of Law, Data Privacy,” with the aim of bringing consistency and depth to the burgeoning area of law, which it characterized as “a bewildering assortment of numerous federal and state laws that differ significantly from each other.” The Uniform Law Commission promulgated a Uniform Personal Data Protection Act which applies fair information practices to the collection and use of personal data from consumers by business enterprises but does not address the collection of biometric data from employees.

Mr. Silver concluded that, given the pace at which this legal landscape is changing, the Legislature’s awareness of and ongoing work in the area, and the possible policy and fiscal ramifications, Staff seeks the direction of the Commission regarding the need for additional research and outreach.

Chairman Gagliardi first stated that he believed the Commission is statutorily obligated to review and provide its analysis of ULC acts to the Legislature, and therefore, that it makes sense to incorporate the biometric data project into a project focused on the ULC act addressing data privacy. Commissioner Cornwell added that, even setting aside the ULC’s work, this issue is being addressed by states across the political spectrum which indicates its significance. Commissioner Bunn noted that the technology in this area is constantly evolving, and also that the Illinois law is very controversial.

Ms. Tharney indicated that Staff was concerned that the frequent technological changes and advances, coupled with the Legislature’s consistent work in this area might affect whether the Commission continues working on this project. Chairman Gagliardi responded that, given the ULC act in the area, the Commission should provide an analysis consistent with its statutory obligation to advise the Legislature on the work of the ULC, and provided that the biometric data collection project could be subsumed into that task.

Parentage

Laura Tharney discussed with the Commission a memorandum recommending that the Commission pause its work in this area of the law. At the April 2022 meeting, the Commission recognized that its work in the area of parentage had evolved to the point that it required policy determinations that were more appropriately made by the Legislature, rather than the Commission. Staff was directed to return the project to the original objective – ensuring that rights be afforded to different-sex and same-sex spouses. At the same time, the Commission recognized that any report ultimately issued by the Commission should identify for the Legislature issues that arose during the Commission’s work in the area that were beyond its statutory mandate.

In September of 2022, the Commission received comments from interested stakeholders who asked that the Commission pause its work on this project rather than finalizing its recommendations. These commenters advised the Commission that they were working collaboratively with several Sections of the New Jersey State Bar Association on proposed legislation to update New Jersey parentage law to ensure that it protects all children. They advised

the Commission that they would share their work when it is completed and expressed a desire that the Commission would adopt or support this work.

Commissioner Cornwell stated, and Commissioner Long agreed, that based upon the request of the commenters, the Commission should pause its work in this area. John Cannel stated that he believes that there is a role for the Commission's approach in the legal landscape of parentage. He stated that although the Commission's work may not be universally received, it may reach some interested groups.

Chairman Gagliardi stated that on numerous occasions the commenters were advised that it is beyond the Commission's legislative mandate to make policy decisions. As a result, it appears that these commenters are no longer interested in working with the Commission. These individuals, who specialize in this field have merely asked that the Commission pause its work in this area. The invitation to review their work is a straightforward request. When presented with this work, the Commission may either resume or discontinue its work in this area.

The Commission directed Staff to pause its work in this area pending receipt of the work of the New Jersey State Bar Association.

Miscellaneous

Laura Tharney was pleased to advise the Commission that the Office of Legislative Services has provided the Commission with the 2022 Bill Drafting Manual. In addition, the Commission Staff is engaged with three new pro bono volunteers in addition to the current pro bono volunteer and an intern from New Jersey Institute of Technology.

Commissioner Cornwell advised the Commission that the Seton Hall Legislative Journal is in the process of expanding its format. Those working on revising the journal have provided him with very good feedback about working with the Commission over the past decade.

Executive Session

On the motion of Commissioner Cornwell, seconded by Commissioner Bunn, the Commissioners retired into an executive session.

On the motion of Commissioner Long, seconded by Commissioner Cornwell, the Commissioners returned to a public session.

Chairman Gagliardi stated that during the executive session the Commissioners discussed a ten-percent salary adjustment for all salaried Commission employees. A motion to approve these salary adjustments was moved by Commissioner Bunn, seconded by Commissioner Long and unanimously approved by the Commission.

Chairman Gagliardi, speaking for the Commission, expressed his sincerest appreciation for the work and endeavors of the Staff. He noted that it was his hope that all of those who work for the Commission sense the appreciation of each Commissioner when discussing Staff's work on

each project. He emphasized that although members of the public may not know the names of the Commission Staff, the contributions of each member are invaluable to the citizens of New Jersey.

On behalf of the Commission Staff, Laura Tharney thanked the Commission for recognizing the work of the Commission Staff.

Adjournment

The meeting was adjourned on the motion of Commissioner Bertone, seconded by Commissioner Bertone.

The next Commission meeting is scheduled for November 17, 2022, at 10:00 a.m., at the office of the New Jersey Law Revision Commission.