

**ANNUAL REPORTS OF THE
NEW JERSEY LAW REVISION COMMISSION**

1987 - 1992

FIRST ANNUAL REPORT OF THE
NEW JERSEY LAW REVISION COMMISSION

1987

Report to the Legislature of the State of
New Jersey as provided by N.J.S. 1:12A-9.

I. COMPOSITION OF THE COMMISSION, HISTORY, AND WORK

The Law Revision Commission was created by L.1985, c.498 and charged with the duty to:

a. Conduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it for the purpose of discovering defects and anachronisms therein, and to prepare and submit to the Legislature, from time to time, legislative bills designed to

(1) Remedy the defects,
(2) Reconcile conflicting provisions found in the law, and
(3) Clarify confusing and excise redundant provisions found in the law;

b. Carry on a continuous revision of the general and permanent statute law of the State, in a manner so as to maintain the general and permanent statute law in revised, consolidated and simplified form under the general plan and classification of the Revised Statutes and the New Jersey Statutes;

c. Receive and consider suggestions and recommendations from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, and other learned bodies and from judges, public officials, bar associations, members of the bar and from the public generally, for the improvement and modification of the general and permanent statutory law of the State, and to bring the law of this State, civil and criminal, and the administration thereof, into harmony with modern conceptions and conditions; and

d. Act in cooperation with the Legislative Counsel in the Office of Legislative Services, to effect improvements and modifications in the general and permanent statutory law pursuant of its duties set forth in this section, and submit to the Legislative Counsel and the Division for their examination such drafts of legislative bills as the commission shall deem necessary to effectuate the purposes of this section.

Albert Burstein of Hackensack, an attorney, is the Chairman of the Law Revision Commission. Other appointed members of the Commission are attorneys Bernard Chazen of Englewood, Hugo M. Pfaltz, Jr., of Summit, and Howard T. Rosen of Newark.

Ex officio members of the Commission are Senator Edward T. O'Connor, Chairman of the Senate Committee on the Judiciary, of Jersey City, Assemblyman Walter M.D. Kern, Chairman of the Assembly Committee on the Judiciary, of Ridgewood, Elizabeth F. Defeis, Dean of the Seton Hall School of Law who was

represented for part of the year by Professor Robert A. Diab, Peter Simmons, Dean of the Rutgers University Law School - Newark, and Richard G. Singer, Dean of the Rutgers University Law School - Camden.

John M. Cannel is Executive Director of the Commission. Maureen E. Garde is Counsel.

This is the first year of the Commission's operation. Appointments to the Commission were completed on January 13, 1987. The first appropriation for the Commission was for Fiscal Year 1988. Staff was hired during the Summer and Fall of 1987, and the office opened on October 1, 1987.

Although this Commission is new, the concept of permanent, institutionalized statutory revision and codification is not new in New Jersey. The first Law Revision Commission was established in 1925. That commission produced the Revised Statutes of 1937. However, the intent of the Legislature was that the work of revision and codification continue after the Revised Statutes, and so the Law Revision Commission continued in operation. After 1939, its functions passed to a number of successor agencies. Most recently, statutory revision and codification were among the duties of Legislative Counsel (N.J.S. 52:11-61). By L.1985, c.498, the particular functions of statutory revision and codification were transferred to the New Jersey Law Revision Commission.

The task of law revision requires the exercise of care in regard to detail, and therefore requires time. Few projects can be completed quickly. Given the limited period the Commission has been in operation, only one project has been completed. A final report on that project is included as part of this document.

II. PROJECTS AND RECOMMENDATIONS

A. Inconsistency Between Probate Code and Parentage Act

At present, there is an inconsistency between the New Jersey Probate Code and the New Jersey Parentage Act. The Probate Code, N.J.S. 3B:5-10, establishes standards for the determination of whether a child born out of wedlock is a child of the father for the purposes of intestate succession. The Parentage Act, N.J.S. 9:17-38 et seq., establishes standards and procedures for the determination of parentage of a child for every purpose. The two are inconsistent in a number of ways.

The most significant difference is in terms of burden of proof. The Parentage Act includes a whole series of presumptions relating to various fact situations and, in the absence of these situations, provides for determination of parentage by preponderance of the evidence. N.J.S. 9:17-43c. The Probate Code, in contrast, requires the establishment of the parent-child relationship by clear and convincing proof. N.J.S. 3B:5-10. The Parentage Act also includes specific rules for the determination of whether the husband of a child's mother is the father of that child. These rules differ from and are superior to the unclear, and perhaps circular, provision of N.J.S. 3B:5-10a which provides that a child is the child of the husband where "natural parents" marry before or after the birth of a child.

Cases where the inconsistencies between these two statutory provisions are significant in the determination of the case cannot be expected to be frequent; however, even prior to the effective date of the Parentage Act, one such case arose. In Matter of Estate of Calloway, 206 N.J. Super. 377 (App. Div. 1986), the court attempted to harmonize the two provisions using the presumptions of the Parentage Act to meet the proof standard of the Probate Code. Id. at 381-82. While that approach led to a satisfactory result in Calloway, it cannot be expected to do so in general. The two statutes are inconsistent; the version of the Probate

Code chosen for N.J.S. 3B:5-10 was never intended to be enacted in jurisdictions which accepted the Parentage Act. The Comment to the Uniform Probate Code, sec. 2-109, makes this intent clear:

The approval in 1973 by the National Conference of Commissioners on Uniform State Laws of the Uniform Parentage Act reflects a change of policy by the Conference regarding the status of children born out of wedlock to one which is inconsistent with Section 2-109(2) of the Code as approved in 1969. The new language of 2-109(2) conforms the Uniform Probate Code to the Uniform Parentage Act.

The inconsistency between these two sections appears to have arisen from an oversight. The Uniform Probate Code provides two alternative sections. One is to be used where the Parentage Act is in effect, and the other where it is not. At the time the Probate Code was enacted in New Jersey, the Parentage Act had not yet been proposed. As a result, the Legislature chose the version of the Uniform Probate Code which reflected the lack of a Parentage Act. When the Parentage Act was enacted later in 1983, the Probate Code should have been amended to replace what is N.J.S. 3B:5-10 with the version of the Uniform Code which made reference to the Parentage Act. That was not done. Correction of this section is necessary to carry out the intent of the Legislature embodied in the Parentage Act.

The best solution to this statutory inconsistency is to amend the Probate Code to reflect the form of the Uniform Probate Code intended to be used with the Parentage Act. This decision involves accepting the Parentage Act as the preferable statutory scheme for establishing parent-child relationships. That decision would be in accord with the modern principle that the parent-child relationship extends equally, irrespective of the marital state of the parents. See, N.J.S. 9:17-40. It would accept the more clear and specific rules for the determination of parent-child relationships of the Parentage Act and its reflection of the modern principle that scientific tests can be used to make an accurate

determination of parentage in the majority of cases.* There appears no reason to prefer the Probate Code form now in place as N.J.S. 3B:5-10, which is no longer recommended by the Uniform Law Commissioners. See Comment to Uniform Probate Code, sec. 2-109, quoted above.

For these reasons, the Commission recommends amendment of N.J.S. 3B:5-10 and has prepared legislation to that purpose.

* The most significant difference between the New Jersey Parentage Act and the Uniform Parentage Act from which it is derived is the increased reliance of the former on scientific tests to determine parentage. See, e.g., N.J.S. 9:17-51 providing for human leucocyte antigen, electrophoresis and isoelectric tests rather than blood group tests referred to in Section 11 of the Uniform Act. The New Jersey Act assumes the reliability of this sort of testing; see, N.J.S. 9:17-48d. This difference appears to reflect not a difference in policy but a change in technology. See Commissioners' Comment to Section 12 of the Uniform Act.

B. Revision of Law Relating to Courts

The law relating to the structure of the New Jersey court system was enacted in 1951 as part of the codification of Title 2A of the statutes. At the time of that enactment, the structure of the court system was very different from what it is at present. Many courts of county jurisdiction, including county courts, juvenile and domestic relations courts, county district courts, and others existed at that time. Those courts have since been abolished. As those courts have been abolished, their jurisdictions have been transferred to others and eventually to the Superior Court. The process culminated in constitutional amendments approved in 1978 and 1983 creating a unified statewide court system.

The statute implementing these amendments (L.1983, c.405), however, was not a thorough-going revision and codification, but the ad hoc enactment of specific laws transferring jurisdiction and court structure from the old courts to the Superior Court. Most of the old law was superseded rather than repealed. The result is that many statutes continue in Title 2A which have no effect, and there are many references throughout the statutes to courts that no longer exist. It takes considerable care in reading the statutes to know the extent to which various sections have continuing effect and some care to understand the correct impact of the court references. The law as it appears in Title 2A does not reflect the current unified court system or its administration as such.

The project undertaken by the Commission has two parts. The first is a thorough revision of most of the chapters of subtitle 1 of Title 2A. This revision involves simplification of law, removal of overlapping, repetitive, superseded and obsolete sections, and the production of a codification which is consonant with the current structure and administration of the courts. It is not intended to change current practices, but only to make the statutory scheme reflect those practices. This codification is being produced in cooperation with the Administrative Office

of the Courts and in consultation with county officials and others engaged in the operation of the court system, and with bar association groups.

The second part of the project is to correct the many references throughout the statutes to courts which no longer exist. The changes in the court structure left approximately one thousand of these references in every part of the statutes. The goal is to correct each reference in the context of a unified court system so that the intent of each statute is carried out. This part of the project has made use of computer searches of the statutes and individual examination of each statutory reference.

C. Projects Under Consideration

At the end of 1987, the Commission had three projects under active consideration: technical recodification of the New Jersey Statutes, revision of the laws relating to construction liens, and simplification of the requirements for recording documents related to land titles.

1. Mechanics Lien Law

There is a general agreement that the current mechanics' lien law, N.J.S. 2A:44-64 et seq., has serious problems. It does not serve the interests of the people it was designed to protect -- those who perform labor or supply material in construction. It also creates problems for people who engage in construction projects and those who provide financing for those projects.

Two legislative proposals have been made to correct this situation. The National Conference of Commissioners of Uniform State Laws released the Uniform Construction Lien Act this past summer, and the Mechanics' Lien Law Study Commission included a draft of new lien statutes with its 1982 report. The Commission is now examining these two approaches to determine whether it can perform a useful function in making legislative recommendations concerning construction liens.

2. Registration of Land Title Documents

At present, there is a serious backlog in a number of the county offices responsible for recording land title documents. While many factors have contributed to these backlogs, it appears that certain statutory requirements for the recordation of documents may exacerbate these problems. Proposals for the removal of certain statutory requirements have been made by groups of registers, clerks, and others familiar with the recordation process. The Commission is now studying these proposals to determine whether a project should be undertaken in this area.

3. Technical Recodification

The Commission has begun a study of what would be involved in undertaking a recodification of the whole of the New Jersey Statutes. The Commission has corresponded with a number of publishing companies which have participated in technical recodifications, and has examined the experience of a number of recent technical recodifications in other states.

Respectfully submitted,

ALBERT BURSTEIN, Chairman
BERNARD CHAZEN
ELIZABETH F. DEFEIS
WALTER M.D. KERN
EDWARD T O'CONNOR
HUGO M. PFALTZ, JR.
HOWARD T. ROSEN
PETER SIMMONS
RICHARD G. SINGER

JOHN M. CANNEL,
Executive Director

MAUREEN E. GARDE,
Counsel