

#005

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**HANY A. MAWLA
JUDGE**



**216 HADDON AVENUE
WESTMONT, NEW JERSEY 08108
(856) 854-3493**

December 5, 2017

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attention: Comments on Filing Particular Categories of Cases
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037
Via email Comments.Mailbox@njcourts.gov

Re: Supreme Court Committee on Minority Concerns Executive Board Review of the
Recommendations to Implement Policies Regarding the Filing of Particular Categories of
Cases – Comments regarding R. 4:72-1

Dear Judge Grant:

The Supreme Court Committee on Minority Concerns Executive Board (SCCMC), in the Committee's advisory role to the Court, has reviewed the recommended rules changes presented by the Working Group on the Clarification of Divisions – Civil, Family and General Equity.

The SCCMC welcomes the opportunity to continue its role as a partner in assuring access to justice and addressing those concerns as they relate to minorities – in this case LGBTQ youth and their families. The SCCMC Executive Board wishes to offer its feedback regarding the proposed changes to R. 4:72-1, specifically R. 4:72-1(b) and (c). The enclosed comments relate to the "new" group of name changes to be heard by the Family Part, specifically name changes for minors, which prior to the August 29, 2016 operational guidance memorandum, were handled by the Civil Part of the Law Division in accordance with R. 4:72-1. The SCCMC understands that the majority of the additional name changes that are now to be heard by the Family Part under the proposed rules changes will be for trans-identified and gender non-conforming youth.¹

The SCCMC wishes to express its concern that the rules changes as proposed will place an unintended burden upon trans-identified youth and will create perceptions within LGBTQ communities regarding fairness and access to justice. A fundamental milestone in the lives of youth in transition involves the decision to affirm one's gender identity. This milestone is in part met when a transgender youth chooses a new name. The SCCMC's concern is that, under the rule as currently proposed, the Family Part may view such applications as requiring a best interests

¹ The SCCMC Executive Board recognizes that under an operational guidance memorandum dated August 29, 2016 these names changes have been handled in the Family Part and the proposed rules changes codify the procedural changes set forth in the operational guidance memorandum.

analysis even where both parents and the minor support the name change. In such situations, requiring transgender youth and their families to prove the minor's best interests have been met places an unnecessary hurdle before the applicants that may either dissuade such applications or create a public perception of disparate treatment of transgender youth regarding a fundamentally personal decision. Such procedural requirements further open the door to impressions that the Court plays a role in rendering a determination as to a child's gender identity.

For these reasons, the SCCMC suggests it is appropriate in situations where both parents and the minor child consent to/support the name change that it be ordered. Accordingly the SCCMC respectfully suggests the Court consider adding the following language to R. 4:72-1(b): "In such cases where the parents and the child consent to or support the name change application the Court shall order the name change in a summary fashion. While no hearing as to best interests would be necessary in such cases, any hearing held would be for the limited purpose of creating a record and confirming the information set forth in the Verified Complaint."

While the best interest of the child is of paramount interest in the Family Part, in practice the best interest determinations are made in contested matters in accordance with N.J.S.A. 9:2-4(a). Thus, the Court can achieve the benefits of adjudicating the uncontested name change matters in the Family Part via a summary proceeding while preserving the legislative intent and presumptions of a parent's right to name a child. The SCCMC believes this approach recognizes the basic premise for the transfer of these actions to the Family Part, namely that the court sits *parens patriae*. However the proposed changes proffered by the SCCMC also respect the parental autonomy of the parents, in this case the parents of transgender and gender non-conforming youth. This balanced approach was codified by the Legislature in N.J.S.A. 9:2-4(d), which provides that "[t]he court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child."

Furthermore, while the Court addresses the procedures for name changes for minors, the SCCMC Executive Board also recommends consideration be given to establishing a statewide policy in these matters regarding waiver of the publication requirement, sealing of the records, and the standardized use of initials to protect a child's privacy. The SCCMC includes members and staff who possess the relevant subject matter expertise and is willing to assist the Court in drafting a policy for its review and consideration.

The SCCMC Executive Board thanks the Court for the opportunity to contribute to its consideration of these rules changes.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Hany A. Mawla', with a stylized flourish at the end.

Hany A. Mawla, J.S.C. (t/a)
Chair, Supreme Court Committee on Minority Concerns

cc: Steven D. Bonville, Chief of Staff
SCCMC Executive Board
Yolande P. Marlow, Minority Concerns Program Manager
Lisa R. Burke, Minority Concerns Program Coordinator
Jacqueline M. Draper, Family Practice, Staff to the SCCMC Subcommittee on Juvenile
Justice and the Family