

Hon. Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037

March 21, 2019

RE: Proposed Amendments to R. 1:38-3 – Court Records Excluded from
Public Access

Dear Judge Grant:

We write to express general support to the proposed amendments to Rule 1:38-3, but to request that certain modifications be made in light of two concerns.

R. 1:38-3 is the court rule that ensures that court records in certain proceedings are kept confidential. The proposed amendment to R. 1:38-3(d) would add “(18) Records Relating to Special Immigrant Juvenile Status matters” to the list of Family Part records that are protected from public access. The Family Practice Committee recommends this addition because, when a child or caregiver asks a court to make findings related to Special Immigrant Juvenile Status (“SIJS”), certain sensitive information pertaining to child abuse, neglect, abandonment, or similar circumstances is discussed as part of the proceeding and is reflected in various court documents, including the special findings order (often called a “predicate order”). We agree with the Family Practice Committee that matters involving SIJS findings are “akin to . . . Division of Child Protection and Permanency (DCPP) proceedings,” which are excluded from public access under R. 1:38-3(d)(12). Accordingly, we agree that the amendment is necessary. Our comments regard the need for some modifications to the proposed amendment in the interest of accuracy. Our comments are also meant to ensure that the child can proceed with his or her application for SIJS based on the Family Part’s predicate order and also share that order for the purpose of protecting the child’s welfare.

Our first concern is with the terminology used in the proposed amendment. The proposed language identifies the proceedings as “Special Immigrant Juvenile Status (SIJS) matters.” In actuality, there are no “SIJS matters.” SIJS is a federal immigration benefit. Stated differently, it is a form of immigration relief that a child can apply for with the Department of Homeland Security. It is not relief that is granted by the Superior Court of New Jersey, Family Part. Rather, a request for the Family Part to render Special Immigrant Juvenile findings occurs when a party

makes a written or oral application/motion within a well-established Family Part matter. Such a request can take place in any number of family court proceedings, including Division of Child Protection and Permanency proceedings, termination of parental rights trials, custody and guardianship matters, adoptions, and juvenile justice matters. However, there are technically no “SIJS matters.” It therefore would be more appropriate and accurate for amended R. 1:38-3(d) to state as follows: “(18) records related to any matter in which a party has requested that the court make findings related to Special Immigrant Juvenile Status (SIJS).”

Our second comment concerns the need for the following phrase to be added to the end of proposed R. 1:38-3(d)(18): “provided, however, that nothing in this rule shall prevent the subject child or the child’s legal custodian from voluntarily sharing such documents for the purpose of supporting the child’s SIJS petition or as otherwise necessary for the welfare of the child.” The exception we recommend is necessary for two reasons. *First*, every child who applies to federal immigration authorities for SIJS must append the Family Part predicate order to the SIJS application. Further, with increasing frequency, the United States Citizenship and Immigration Services (USCIS), which adjudicates SIJS petitions, requests additional evidence. Responding to such requests may necessitate sharing documents submitted to the Family Part in support of the predicate order. Without an exception that permits the relevant documents to be shared with immigration authorities to the extent necessary to support a SIJS petition, the child will be in violation of the very court rule that is meant to benefit said child. *Second*, the subject child or the child’s legal custodian may need to share the Family Part order with schools or health care providers to establish the custodial relationship between the child and the custodian. Predicate orders commonly vest legal custody of the child in an individual or entity. The legal custodian may need to present a predicate order (or at least that part of the order pertaining to custody) to establish the custodian’s authority to consent to the child’s health care, participation in sports, or participation in school field trips, for example. The rule should not prevent the custodian from sharing the order insofar as necessary to protect the welfare of the child in these and similar ways.

In short, we strongly support the proposed amendment, and commend the Family Practice Committee for proposing it, but ask that it be amended to state as follows:

records related to any matter in which a party has requested that the court make findings related to Special Immigrant Juvenile Status (SIJS), provided, however, that nothing in this rule shall prevent the subject child or the child’s legal custodian from voluntarily sharing such

documents for the purpose of supporting the child's SIJS petition or as otherwise necessary for the welfare of the child.

Thank you for your consideration of this request. Please feel free to contact us if further discussion is warranted.

Respectfully submitted,

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