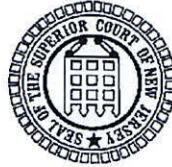


#004

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

HANY A. MAWLA
JUDGE



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

March 26, 2021

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Comments on Assessing the Competency of Child Witnesses
Hughes Justice Complex
P.O. Box 037
Trenton, New Jersey 08625-0037
Via email Comments.Mailbox@njcourts.gov

Re: Comments on Assessing the Competency of Child Witnesses

Dear Judge Grant:

The Supreme Court Committee on Diversity, Inclusion and Community Engagement (SCC-DI&CE) Executive Board offers these comments regarding the report and recommendations of the Joint Committee on Assessing the Competency of Child Witnesses (the Joint Committee).

The Joint Committee, working with subject matter experts, addressed State v. Bueso, 225 N.J. 193 (2016), in which the Court noted a lack of consistency in the procedure for assessing the competency of child witnesses. Its report proposes the adoption of a standard protocol, the use of which is limited to cases where the competency of a child witness has been raised. The report also concludes that a child-appropriate promise to tell the truth is clearly grounded at the intersection of child developmental psychology, New Jersey law, and the Rules of Evidence.

We believe the Joint Committee recommendation addresses the inconsistency issues raised in Bueso and its recommendations advance procedural fairness in a number of ways that particularly resonate with the mission of Diversity, Inclusion, and Community Engagement.

- By providing both verbal and visual options, the protocols ensure an accurate assessment of children who are developmentally different, those who possess less developed vocabulary, and child-victims whose trauma only permits them to express themselves in either a verbal or visual means. The protocols recommended by the Joint Committee avoid the potential exclusion of competent child witnesses who might otherwise be excluded because of a perceived inability to demonstrate competency using assessment tools that are not grounded in the current science of child development.
- Children from different cultural and economic backgrounds will be equitably assessed given the use of an interviewer script that accepts as valid a child’s “misnaming” of a visual (e.g., naming the mouse depicted as a rat or a peach as an orange). So long as these vocabulary and context variations cannot become the basis to challenge accuracy during testimony, we believe that common concerns about embedded cultural biases, e.g., in the case of vocabulary and terminology in standardized tests, are ameliorated by this assessment standard.
- The diversity in the racial and ethnic features of the images of the children in the sample illustrations included in the report are fair and balanced and do not reinforce bias-based implicit assumptions about who is truthful and who is not, e.g., the selected sample visuals generally depict the child of color as being truthful.¹
- The recommendations ensure procedural fairness for all child witnesses and child-victim witnesses in particular.

We recognize that the proposed protocols are readily applicable to criminal, juvenile delinquency, and civil contexts while other Family Part dockets might rely on existing competency assessment tools. Accordingly, we believe it is in the interest of justice to remedy the issues raised in Bueso and adopt the recommendations of

¹ We anticipate the final resource packet made available to judges upon promulgation of the protocol will be as diverse as the examples provided in the report. We urge that the images be diverse and inclusive not only as to the children depicted but also the adults in the images, particularly varying representations regarding gender (including non-binary or non-gendered images) and including a variety of adults by adding images of teachers, librarians, parents/grandparents/caretakers.

the Joint Committee. Consistent with Judiciary practices we look forward to the promulgation of training for judges and the bar, and the availability of a broad array of balanced and diverse images for use in these assessments, reflecting diversity, inclusion, and equity best practices as set forth in the Joint Committee's report.

We again thank the Court for the opportunity to provide commentary on its efforts in this critically important area.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Hany A. Mawla', written in a cursive style.

Hany A. Mawla, J.A.D., Chair
Supreme Court Committee on Diversity, Inclusion, and Community Engagement

cc: Steven D. Bonville, Chief of Staff
Dr. Yolande P. Marlow, Diversity, Inclusion, and Community Engagement
Program Director
Lisa R. Burke, Diversity, Inclusion, and Community Engagement
Program Coordinator