

1 **SUPERIOR COURT OF NEW JERSEY**

2 **APPELLATE DIVISION**

3 **DOCKET NO.: A-247-25**

4 **In the Matter of the Trust Created for the Benefit of Gina Cifello**

5 **Gina Cifello, Compos Sui, Sui Juris, Pro Se**

6 Appellant,

7 v.

8 **ESSEX COUNTY SURROGATE COURT CLERK'S OFFICE,**

9 Respondent.

10 **DOCKET NO.: C-127-25**

11 **On Appeal from the Superior Court of New Jersey**

12 Chancery Division, Essex County

13 Hon. Cynthia D. Santomauro, J.S.C.

14 **APPELLANT'S CORRECTED BRIEF**

15 Respectfully Submitted by:

16 Gina Cifello, Appellant, Private Citizen, Compos Sui, Sui Juris, Pro Se

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35 **TABLE OF JUDGMENTS, ORDERS AND RULINGS APPEALED FROM**

36 **Date of Entry:** August 1, 2025

37

38 **Description:** Order denying Petitioner's Order to Show Cause
39 seeking a writ of mandamus to compel the Essex County Surrogate's Clerk to
40 accept and file the "Petition for Correction of Records, Status, Formal
41 Accounting, and Motion for Declaratory Relief." The Court found "no good
42 cause shown" and determined that "the refusal of the Essex County Surrogate
43 to file the memorial for correction/change of birth records was appropriate."

44

45 **Judge / Officer:** Hon. Cynthia D. Santomauro, J.S.C.

46

47 **Record Reference:** (Appendix Page): A-1; pages 1a – 3a

Table of Authorities (with reference to page)

48	<u>Cases</u>	
	Case	Page(s) Cited
	Boddie v. Connecticut, 401 U.S. 371 (1971)	13
	Chisholm v. Georgia, 2 U.S. (2 Dall.) 419 (1793)	16
	Curtis v. Finneran, 83 N.J. 563 (1980)	7
	Dwyer v. Clerk of Dist. Court, 404 N.W.2d 167 (Iowa 1987)	14
	Hooker v. Sivley, 187 F.3d 680 (5th Cir. 1999)	11,14
	Loigman v. Middletown, 297 N.J. Super. 287 (App. Div. 1997)	10
	Rojas v. Cutsforth, 67 Cal. App. 4th 774 (1998)	14
	State ex rel. Dawson v. Roberts, 165 Ohio St. 341, 135 N.E.2d 373 (1956)	14
	Zaman v. Felton, 219 N.J. 199 (2014)	9
49	<u>Statutes</u>	
	Statute	Page(s) Cited
	18 U.S.C. § 242 (Deprivation of Rights Under Color of Law)	6, 10, 14, 16
	N.J. Stat. Ann. § 26:8-49 (Correction/Amendment of Vital Records)	5, 8
	N.J. Stat. Ann. § 3B:17-3 (Trust Accounting)	5, 8, 15
	N.J. Rev. Stat. § 2C:28-5 (Tampering With Public Records)	10
50	<u>Constitutional Provisions</u>	
	Provision	Page(s) Cited
	U.S. Const. amend. I (Right to Petition)	4, 10, 12, 13
	U.S. Const. amend. XIV (Due Process & Equal Protection)	4, 10, 12, 13
	N.J. Const. art. I, ¶ 18 (Right to Petition)	13, 17
51	<u>Court Rules</u>	
	Rule	Page(s) Cited
	N.J. Ct. R. 1:5-6(c) (Ministerial Duty to File)	7, 10, 14, 17
	N.J. Ct. R. 1:7-4(a) (Findings & Conclusions)	7
	N.J. Ct. R. 1:13-4(a) (Mandatory Transfer)	4, 7, 13, 15
	N.J. Ct. R. 4:42-1 (Form of Orders)	7
	N.J. Ct. R. 4:69-1 (Mandamus Procedure)	6, 10
	N.J. Ct. R. 4:87 (Trust Accounting Actions)	15

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Preliminary Statement (Discretionary)

This appeal arises from the denial of Gina Cifello’s petition for correction of records affecting her status, equitable accounting and Interest in certain identifiable property (A-5, 20a-42a; A-6, 43a-46a). The trial court improperly upheld the clerk’s refusal to file Gina’s petition, concluding—without a hearing—that the memorial (submitted to chambers in trust) “failed to state a legally cognizable claim.” (A-1, 1a-3a)

This case involves the unconstitutional denial of Gina Cifello’s right to access the courts and petition the government for redress of grievances (i.e. correction of status, etc.). The lower court improperly dismissed the petition, failed to transfer to the correct division as required by R. 1:13-4(a), and deprived Appellant of due process secured by the U.S. Constitution, the New Jersey Constitution, and statutory law (A-2, 4a-12a).

This denial is erroneous because:

1. Clerks have a ministerial duty to file documents under the laws and Rule 1:5-6(c) and may not reject filings based on content.
2. Petitioner’s rights under the U.S. Constitution and New Jersey Constitution were violated when access to the courts was denied.

70 3. The petition sought relief **expressly authorized by statute**, including
71 correction of records (N.J.S.A. 26:8-49), property and trust accounting
72 (N.J.S.A. 3B:17-3). **(A-5; 20a-42a)**

73 4. **Equity mandates judicial review** to prevent continued deprivation of
74 rights.

75 For these reasons, this Court should reverse and remand with instructions to
76 accept the petition for filing and proceed on the merits. **(A-1, 1a-3a)**

77

Procedural History

- 78 • **June 10, 2025** – Petitioner Gina Cifello attempted to file her petition-
79 “Memorial for Correction of Records and Formal accounting” with the Essex
80 County Surrogate Court Clerk’s Office (**A-5, 20a-42a**). Clerk refused to
81 accept or docket filing (**A-7, 47a-53a**).
- 82 • **Same day** – Law enforcement called, resulting in intimidation and threats of
83 arrest against Gina. (**A-7, 47a-53a**). Complaint filed for Title 18 U.S.C. §
84 242 violation with Sherriff’s Office. (**A-7, 47a-53a**)
- 85 • **June 11, 2025** – Gina filed a petition for a Writ of Mandamus in the
86 Chancery Division, Essex County, under applicable law and **Rule 4:69-1**,
87 seeking to compel 72 the clerk to file the petition. (**A-2, 4a-12a**)
- 88 • **August 1, 2025** – Hon. Cynthia D. Santomauro, J.S.C., denied the petition,
89 holding the memorial ‘did not state a legally cognizable claim’ and upheld the
90 clerk’s refusal to file. (**A-1, 1a-3a**)
- 91 • **September 3, 2025** – Gina filed a Notice of Appeal and required Documents.
92 (**A-3, 13a-15a; A-4, 16a-19a**)
- 93 • **October 3, 2025** – Files Amended Notice of Appeal (**A-3, 13a-15a**).

94

Issues for Review

95 1. Did the trial court err by dismissing Appellant's petition instead of

96 transferring it to the appropriate division, contrary to **Rule 1:13-4(a)**?

97 2. Did the clerk's refusal to file documents violate Rule 1:5-6(e) and Appellant's

98 constitutional right to petition and access the courts?

99 3. Did the trial court's denial constitute a deprivation of due process under the

100 **First and Fourteenth Amendments?**

101 4. Did the Judge's "bare" or "naked" Order comply with Legal and Court

102 standards under R. 1:7-4(a), R. 4:42-1, or *Curtis v. Finneran*, 83 N.J. 563,

103 etc.?

104 5. Did the Court "prepare" or "issue" the Order directing "defendant" (*whom*

105 *does not appear as represented on record*) to "serve" all parties a valid Lawful

106 Order?

107 6. Did the Courts and public trustees violate their Oath of Office?

108 7. Did Essex County (as trustees), by and thru its agents and officers, disclaim

109 the trust evidenced by the public record?

110

Statement of Facts

111 This case arises from the Essex County Surrogate Court Clerk's Office's
112 refusal to accept and file Appellant Gina Cifello's petition and memorial seeking
113 **correction of records, formal trust accounting, and conveyance of legal title**
114 to property and rights, titles and interest held in trust for her benefit, and the
115 subsequent denial for Writ of Mandamus after a delay of 45 days. Gina asserts
116 that her rights under **New Jersey statutory law, constitutional guarantees,**
117 **and equitable trust principles** have been denied at multiple levels.

118

1. Petition to Correct Records and Demand Accounting

119 In June 2025, Gina prepared and submitted a **Memorial for Correction of**
120 **Records and Petition for Formal Accounting** to the Essex County Surrogate
121 Court Clerk's Office (**A-5,20a-42a; A-6, 43a-46a**).

122 The petition requested the following relief:

- 123 • **Correction and amendment of her records** under applicable laws and
124 **N.J.S.A. 26:8-49**, which expressly grants individuals the right to correct
125 inaccuracies in records.
- 126 • **Full and formal trust accounting** pursuant to **N.J.S.A. 3B:17-3**, requiring
127 trustees to account to beneficiaries upon demand (**A-5,20a-42a**).

128 • **Conveyance of legal title** to property and rights currently held by the
129 Trustees, consistent with the principle that **equitable title holders are**
130 **entitled to compel legal title** when equitable conditions have been met
131 (Zaman v. Felton, 219 N.J. 199 (2014)), such as age of majority,
132 competency, or removal of a legal disability (**A-5,20a-42a; A-6, 43a-46a**).

133 Gina's petition was prepared **in good faith**, with clean hands, admissible
134 evidence and properly addressed to the Chancery Division — the court of
135 competent jurisdiction for matters of **trust, equity, and record corrections**.

136 **3. Refusal by Clerk's Office and Threats of Arrest**

137 On **June 10, 2025**, Gina appeared at the **Essex County Surrogate Court** to file
138 her petition. Instead of ministerially accepting her filing, the **Clerk's Office**
139 **holder made a legal determination and refused** to accept or docket her
140 petition, without reason or explanation.

141 When Gina **asserted her right to petition and access the courts**, court staff
142 escalated the situation by making a "duress call" to the **Essex County Sheriff's**
143 **Office**. Deputies advised her that she would be arrested if she did not leave the
144 premises, despite her peaceful conduct. With one Deputy stating "I am the
145 **Law.**" (**A-7, 47a-53a**)

146 This refusal violated:

- 147 • **New Jersey Court Rule 1:5-6(c)**, which mandates that clerks “**shall file**
148 **all papers presented for that purpose, even if not in proper form.**”
- 149 • Gina’s **First Amendment** right to petition the government for redress of
150 grievances (**A-8, 54a-55a; A-9, 56a-58a**).
- 151 • Gina’s **Fourteenth Amendment** right to procedural due process and
152 meaningful access to the courts. And subsequent actions may constitute
153 felonies under state and federal law, including NJ Rev Stat § 2C:28-5, 18
154 U.S.C § 242, etc. (**A-8, 54a-55a; A-9, 56a-58a**).

155 **4. Petition for Writ of Mandamus**

156 With no other remedy available, Gina filed a **Verified Petition for Writ of**
157 **Mandamus** in the **Chancery Division** under **Rule 4:69-1**.

158 Her mandamus petition requested that the Court **compel the clerk to perform**
159 **their ministerial duty** to accept and file her petition so that judicial review
160 could proceed on the merits (**A-2,4a-12a**).

161 The petition emphasized that a clerk does not have authority to determine the
162 sufficiency of pleadings, citing established precedent:

- 163 • *Loigman v. Middletown*, 297 N.J. Super. 287 (App. Div. 1997) –
164 mandamus appropriate where public officials fail to act on nondiscretionary
165 duties.

166 • Hooker v. Sivley, 187 F.3d 680 (5th Cir. 1999) – clerks must accept filings
167 regardless of content **(A-11; 65a-66a)**.

168 **5. Denial of Mandamus Relief Without Hearing**

169 On **August 1, 2025**, the Hon. Cynthia D. Santomauro, J.S.C., **denied Gina’s**
170 **mandamus petition in its entirety** without granting a hearing **(A-1, 1a-3a)**.

171 The court’s order stated that Gina’s petition “failed to state a legally cognizable
172 claim” and that the clerk acted properly by refusing to file it **(A-1, 1a-3a)**.

173 This ruling **effectively insulated the clerk’s unlawful conduct** from review and
174 **barred Gina from accessing the judiciary**, leaving her without any meaningful
175 remedy **(A-6, 43a-46a)**.

176 **6. Resulting Harm**

177 Because Gina’s petition has never been accepted for filing:

- 178 • She remains **unable to correct inaccuracies** in her records, contrary to her
179 statutory rights granted and constitutional secured guarantees.
- 180 • She has been **denied a formal accounting** of the trust property associated
181 with her name and identity.
- 182 • She continues to **suffer deprivation of property rights** and the inability to
183 assert her equitable ownership

184 • Her constitutional rights to **petition, due process, and equal protection**
185 remain violated.

Legal Argument

186

187 **POINT I – Denial of Access to Courts and the Right to Petition (A-2)**

188 The lower court's dismissal of Appellant's petition, rather than transferring it
189 pursuant to **Rule 1:13-4(a)**, constitutes a direct violation of Appellant's **First**
190 **Amendment right to petition the government for redress of grievances** and
191 **the Fourteenth Amendment's guarantee of due process**. The right of access
192 to the courts is a fundamental liberty interest long recognized under federal
193 and state constitutions. In *Boddie v. Connecticut*, 401 U.S. 371 (1971), the
194 Supreme Court held that when a person's rights can only be adjudicated
195 through judicial process, denial of access constitutes a deprivation of due
196 process. Similarly, **N.J. Const. Art. I, ¶ 18** expressly guarantees the people's
197 right to petition for redress of grievances, imposing an affirmative duty on the
198 courts to ensure an open forum for justice. By dismissing the petition outright,
199 without considering its substance or transferring it to the proper division, the
200 trial court unlawfully deprived Appellant of meaningful access to judicial
201 review, violating both federal constitutional guarantees and New Jersey's
202 highest law. **(A-1, 1a-3a)**

203 **POINT II – Clerks’ Ministerial Duty to File and Judicial Error (A-2)**

204 The Essex County Surrogate Clerk’s refusal to accept and file Appellant’s
205 petition also violated established **ministerial obligations** under both state law
206 and federal authority. **Rule 1:5-6(c)** unambiguously provides: “*The clerk shall*
207 *file all papers presented for that purpose, even though not in proper form.*” The
208 rule removes any discretion from clerks regarding the sufficiency or legal
209 adequacy of pleadings, a principle uniformly upheld in other jurisdictions. See
210 *Hooker v. Sivley*, 187 F.3d 680 (5th Cir. 1999); *Rojas v. Cutsforth*, 67 Cal.
211 App. 4th 774; *State ex rel. Dawson v. Roberts*, 165 Ohio St. 341. **The**
212 **Memorandum of Law and Rights** reiterates this ministerial role and
213 establishes that a clerk’s refusal to file documents constitutes an unauthorized
214 act under color of law, exposing the clerk to liability under **18 U.S.C. § 242**.
215 Only a judge has authority to assess the legal sufficiency of a filing (*Dwyer v.*
216 *Clerk of Dist. Court*, 404 N.W.2d 167 (Iowa 1987)), and here, the trial court
217 compounded the deprivation by endorsing the clerk’s unlawful refusal. This
218 dual failure denied Appellant the procedural safeguards guaranteed by both
219 state rules and the Constitution. **(A-2, 4a-12a)**

220 **POINT III – Mandatory Transfer, Not Dismissal (Not Raised Below)**

221 Even if the trial court believed that Appellant’s petition should have been
222 venued in another division of the Superior Court, the remedy prescribed by
223 **Rule 1:13-4(a)** is unequivocal: “*If any court, division or county is without*
224 *jurisdiction of the subject matter of an action, it shall ... order the action*
225 *transferred to the proper court, division or county.*” (emphasis added). The rule
226 was designed to prevent the very harm inflicted here — the loss of substantive
227 rights due to a technical venue defect. The Appellate Division has repeatedly
228 recognized that dismissal, where transfer is possible, constitutes reversible
229 error. By dismissing the petition outright, the court effectively insulated
230 Respondents’ unlawful conduct from judicial scrutiny and deprived Appellant
231 of her statutory rights under **N.J.S.A. 3B:17-3** and **Rule 4:87**, which entitle
232 trust beneficiaries to an accounting and correction of records. This error is
233 especially egregious where, as here, the petition concerns correction of birth
234 records and property rights, titles, and interests that are constitutionally
235 protected and central to personal liberty and identity. (**A-1, 1a-3a; A-5, 20a-**
236 **42a)**

237 **POINT IV – Deprivation of Rights Under Color of Law (A-2; A-7)**

238 Finally, the cumulative effect of the clerk’s refusal, the trial court’s dismissal,
239 and the failure to transfer the petition amounts to an actionable deprivation of
240 rights under **18 U.S.C. § 242**, which criminalizes the willful denial of rights
241 protected by the Constitution under color of law. The sovereign authority of
242 the United States resides in the people, not the government (*Chisholm v.*
243 *Georgia*, 2 U.S. 419 (1793)), and public officials derive their authority solely
244 from their duty to uphold those rights. When public officers act contrary to
245 this duty — whether by obstructing filings, denying access to courts, or
246 refusing to transfer matters to the proper venue — they violate not only
247 individual rights but also the sovereignty of the United States itself. As such,
248 this Court must reverse the lower court’s decision, direct acceptance and
249 docketing of Appellant’s petition, and remand for expedited adjudication to
250 ensure Appellant’s secured rights to property, identity, and due process are
251 vindicated. **(A-1, 1a-3a; A-7, 47a-53a)**

252

Conclusion and Relief Required

253 For the foregoing reasons, Appellant **Gina Cifello** respectfully submits that the
254 judgment of the Superior Court, Chancery Division, entered on **August 1,**
255 **2025**, must be **reversed**. The lower court erred by:

256 1. Denying Appellant access to the courts and violating her **First**
257 **Amendment** and **Fourteenth Amendment** rights, as well as her rights
258 under **Art. I, ¶ 18** of the **New Jersey Constitution**.

259 2. Permitting the Essex County Surrogate Clerk to unlawfully refuse to file
260 Appellant's petition, contrary to the **ministerial duties imposed by New**
261 **Jersey Court Rule 1:5-6(e)** and reinforced by controlling federal and
262 state case law.

263 3. Failing to comply with **Rule 1:13-4(a)**, which mandates transfer — not
264 dismissal — when venue or division is improper.

265 This Court should exercise its supervisory and equitable powers to ensure
266 Appellant's rights are fully protected. **Equity regards as done that which**
267 **ought to be done**, and the relief sought here is necessary to vindicate
268 constitutional guarantees, protect the integrity of judicial process, and restore
269 confidence in the courts as trustees of the people's rights.

270 Accordingly, Appellant **respectfully requests** that this Court enter an Order:

271 1. **Reversing** the order of the Superior Court dated **August 1, 2025**;

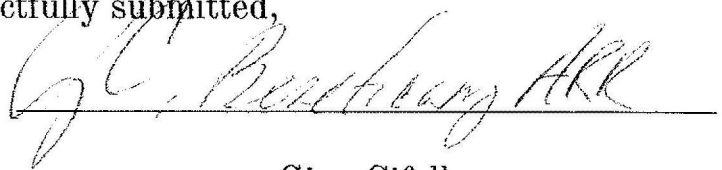
272 2. **Directing** the Essex County Surrogate Clerk's Office to **accept and docket**
273 Appellant's petition/memorial for correction of records, accounting, and
274 other related matters;

275 3. **Remanding** the matter to the Superior Court or Equity court for **expedited**
276 **adjudication on the merits**;

277 4. Declaring that Appellant's constitutional rights — including her rights to
278 petition, access the courts, due process, and equal protection — be **strictly**
279 **safeguarded** at every stage; and

280 5. Granting such other and further relief as this Court deems **just, equitable,**
281 **and proper. (A-1, 1a-3a)**

282 Respectfully submitted,

283 

284 Gina Cifello

285 Appellant, Compos Sui, Sui Juris, Pro Se
286 Private Citizen and Beneficiary of
287 The United States of America



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December 12, 2025

Marie C. Hanley, Clerk
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Richard J. Hughes Justice Complex
P.O. Box 006
Trenton, NJ 08625-970

Re: Gina Cifello v. Essex County Surrogate Court
Clerk Docket No. A- 000247-25

Dear Ms. Hanley:

This office represents Defendant, Essex County Surrogate Court Clerk, in the above-referenced appeal. Kindly accept this submission as Respondent's letter brief in lieu of a formal brief, pursuant to R.2:6-4(a).

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Conclusion 5

PROCEDURAL HISTORY

Plaintiff filed an Order to Show Cause and Verified Complaint (the “Complaint”) in the Superior Court of New Jersey, Chancery Division, Essex County, on June 6, 2025 seeking a Writ of Mandamus to compel the Essex County Surrogate Clerk's Office to accept and file her petition/memorial to correct or change birth records on August 1, 2025. The trial court denied the Order to Show Cause in its entirety and dismissed the Complaint. (Pa 1-1)

COUNTERSTATEMENT OF FACTS

The Order to Show Cause and Complaint filed in the Chancery Division of the Superior Court of New Jersey does not in any way state a legally cognizable cause of action and does not meet the elements of proof required for a complaint filed in the Probate Part of the Chancery Division. In addition, the birth records Plaintiff sought to have changed were never produced. (Pa 1, 2.)

LEGAL ARGUMENT

POINT I

**THE TRIAL COURT'S DECISION TO DENY
THE ORDER TO SHOW CAUSE AND DISMISS
THE COMPLAINT FOR LACK OF
JURISDICTION SHOULD BE AFFIRMED.**

The Essex County Surrogate had no authority to accept documents such as a birth certificate or name change certificate, which have no relation to matters administered by the Surrogate, such as an estate, guardianship, or adoption proceeding.

The trial court considered Plaintiffs name change request, or change of birth record, and determined that the Chancery Division lacked jurisdiction over the matter. Although Plaintiff argues that the trial judge could have transferred the case to the Law Division, pursuant to R.1:13-4, she disregards the fact that her Complaint did not state a cause of

action, and that her name change request was to her current name. (Pa 10). Accordingly, the trial court properly declined jurisdiction in accordance with N.J.S.A. 2A:52-1.

POINT II

THE TRIAL COURT'S DETERMINATION TO DENY THE ORDER TO SHOW CAUSE AND DISMISS THE COMPLAINT FOR FAILURE TO STATE A CAUSE OF ACTION SHOULD BE UPHOLD.

The trial court determined that the Essex County Surrogate's refusal to file Plaintiff's document was appropriate, as the document did not state a legally cognizable claim, nor did it meet the requirements of a Complaint filed in the Probate Part of the Chancery Division (Pa 1-1). Specifically, there is no legal authority to compel or require a county surrogate to file a "memorial for correction/change of birth records."

Plaintiff's failure to produce the birth records cannot possibly state a claim for which relief could be granted. Furthermore, Plaintiff's request for a name change to her own name can in no way state a cause of action and is otherwise frivolous.

CONCLUSION

For the reasons set forth above, the trial court acted properly when it denied the Order to Show Cause in its entirety and dismissed the Complaint.

Accordingly, the trial court's decision in this matter must be affirmed

Respectfully submitted

s/Gary J Cucchiara
Gary J. Cucchiara
Assistant County
Counsel

GJC/gs
cc/Gina Cifello, Plaintiff/Appellant (via e- court and certified mail)
Essex County Surrogate

