

NOTICE TO THE BAR

Recommendations to Implement Policies Regarding the Filing of Particular Categories of Cases – Comments Sought

This Notice publishes for written comment the July 6, 2017 report **Recommendations to Implement Policies Regarding the Filing of Particular Categories of Cases**. The Working Group on the Clarification of Divisions – Civil, Family and General Equity (Working Group) was charged by the Supreme Court to develop court rule recommendations to implement policies clarifying which trial division of the Superior Court should hear particular categories of cases that were being treated inconsistently statewide. The policies, approved by the Court, were the result of the work of a joint committee of the Presiding Judge Conferences (Civil, Family and General Equity). The eleven categories of cases are as follows: Name Change, Partition, Enforcement of Judgments, Palimony, Parenting Time/Visitation, Pets, Personal Possessions, Ejectment, Requests for Transcripts of Closed Family Court Proceedings Made in a Civil Action, Birth Certificates and Marriage Certificates, and Post-Judgment Relief Relating to Incapacitated Adult Children of Parents Subject to a Family Part Order.

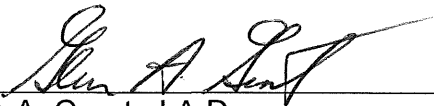
The rule recommendations are set forth in the Working Group's July 6, 2017 report entitled, "Recommendations to Implement Policies Regarding the Filing of Particular Categories of Cases," which is published with this notice. The Supreme Court Civil Practice, Family Practice, and Special Civil Part Practice Committees have reviewed and all have endorsed the Report and recommendations.

Please send any comments on this report and its recommendations in writing by **December 1, 2017** to:

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

Comments may also be submitted by e-mail to: Comments.Mailbox@njcourts.gov

The Supreme Court will not consider comments submitted anonymously. Thus, those submitting comments by mail should include their name and address and those submitting comments by email should include their name and email address. Comments submitted in response to this notice are subject to public disclosure.

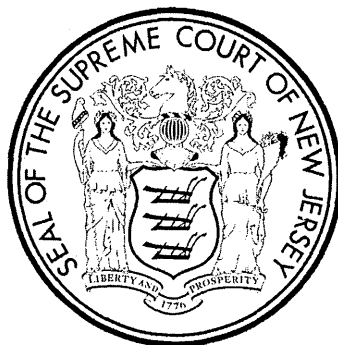


Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts

Dated: October 30, 2017

NEW JERSEY SUPREME COURT

RECOMMENDATIONS TO IMPLEMENT POLICIES REGARDING THE FILING OF PARTICULAR CATEGORIES OF CASES



**WORKING GROUP ON THE CLARIFICATION OF DIVISIONS
CIVIL, FAMILY AND GENERAL EQUITY
July 6, 2017**

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INTRODUCTION

The Working Group on the Clarification of Divisions – Civil, Family and General Equity (Working Group) was charged by the Supreme Court to develop court rule recommendations to implement policies clarifying which trial division of the Superior Court should hear particular categories of cases. The policies were the result of the work of a joint committee of the Presiding Judge Conferences (Civil, Family and General Equity) that addressed areas of uncertainty and inconsistency statewide. The particular categories are as follows: Name Change, Partition, Enforcement of Judgments, Palimony, Parenting Time/Visitation, Pets, Personal Possessions, Ejectment, Requests for Transcripts of Closed Family Court Proceedings Made in a Civil Action, Birth Certificates and Marriage Certificates, and Post-Judgment Relief Relating to Incapacitated Adult Children of Parents Subject to a Family Part Order.

CONSIDERATIONS AND RECOMMENDATIONS

The initial focus of the Working Group was to identify the court rules addressing the cognizability of actions, that is, where cases are capable of being judicially determined, in particular parts. The Working Group determined that amending R. 4:3-1, "Divisions of Court; Commencement and Transfer of Actions" was most appropriate to clarify the filing and hearing requirements for specific case types. The Working Group proposes references to R. 4:3-1 be added to R. 5:1-2, "Actions Cognizable in the Family Part" and R. 6:1-2, "Matters Cognizable in the Special Civil Part" to direct readers to the actions specified in R. 4:3-1. The Working Group further recommends amending R. 4:72, "Actions for Change of Name" to address the policy for name changes and including a reference to R. 4:72 in R. 5:1-2.

Set forth below for each category in **bold** is the policy the Working Group was charged with codifying in the court rules, followed by the rationale and recommendations of the Working Group.

A. NAME CHANGE

Policy: If the name change involves a minor, the best interests of the child are paramount and, therefore, the matter shall be filed and heard in the Family Part. The name change of an adult is to be filed and heard in the Civil Part with the exception of the return to a maiden name, which shall be filed and heard in the Family Part as part of a pending or post-judgment dissolution action. An application may be filed to change the name of adults and children in the same family. This shall be filed and heard in the Family Part as it involves the best interests of the children. The Family Part will hear the entire application of both children and adults.

The Working Group initially discussed whether the filer of an application for a name change is a "plaintiff" or "petitioner" and determined that since a name change is commenced by the filing of a complaint, the proper terminology is "plaintiff."

The Working Group discussed whether the policy's use of "maiden name" is overly restrictive in that the applicable statute is broader. N.J.S.A. 2A:34-21¹ permits, following divorce or dissolution of a civil union, (1) the resumption of any name used before the marriage or civil union, or (2) the assumption of any surname. The Working Group concluded that the statutory text is consistent with the intent of the policy, and thus recommends replacing "maiden name" with "any name used prior to the marriage or civil union." A party will typically either request resuming a former name as part of a dissolution complaint or file a post-judgment motion. To remain consistent with the statute, the Working Group concluded the assumption of

¹ N.J.S.A. 2A:34-21. Surname

The court, upon or after granting a divorce from the bonds of matrimony to either spouse or dissolution of a civil union to either partner in a civil union couple, may allow either spouse or partner in a civil union couple to resume any name used by the spouse or partner in a civil union couple before the marriage or civil union, or to assume any surname.

a completely new surname should be processed in the Family Part provided it is sought as part of the final relief in the case. However, name change applications requesting a new surname filed after the divorce or dissolution case is closed must be filed and heard in the Civil Part.

Rule Recommendation -- R. 4:72-1

The Working Group thus recommends the following amendments to R. 4:72-1.

Rule 4:72-1. Complaint

(a) [Generally.] Change of Name for Adult.

(1) Generally. An action for change of name of an adult shall be [commenced by filing a verified complaint setting forth the grounds of the application.] filed and heard in the Civil Part of the Law Division of the Superior Court. The action shall be commenced by filing a verified complaint which shall contain the date of birth of the plaintiff and shall state: (1) that the application is not made with the intent to avoid creditors or to obstruct criminal prosecution or for other fraudulent purposes; (2) whether plaintiff has ever been convicted of a crime and if so, the nature of the crime and the sentence imposed; (3) whether any criminal charges are pending against plaintiff and if so, such detail regarding the charges as is reasonably necessary to enable the Division of Criminal Justice or the appropriate county prosecutor to identify the matter. If criminal charges are pending, a copy of the complaint shall be served, at least 20 days prior to the hearing, [be served] upon the Director of the Division of Criminal Justice to the attention of the Records and Identification Section if the charges were initiated by the Division, and otherwise upon the appropriate county prosecutor. Service upon the Division or a prosecutor shall be accompanied by a request that the official make such response as may be deemed appropriate.

(2) Return to Prior Name or Assumption of New Surname in Dissolution Matters.

Any action for return to a name used prior to a marriage or civil union shall be filed and heard in the Family Part of the Chancery Division of the Superior Court, either as part of the dissolution complaint or by post-judgment motion. Any action to assume a new surname may be filed and heard in the Family Part of the Chancery Division of the Superior Court only when it is sought as part of the final relief in a pending dissolution case.

(b) Change of Name for Minor [Involved in a Family Action]. [If the complaint seeks a name change for a minor, the complaint shall state whether the child or any party in interest in the name change application is the subject of a family action pending or concluded within the three years preceding the filing of the complaint. In such event, the action shall be transferred to the Family Part in the vicinage in which the family action is pending or was concluded. If neither the child nor any party in interest is or has been the subject of such action, a certification to that effect shall be appended to the complaint.] An action for the change of name of a minor shall be filed and heard in the Family Part of the Chancery Division of the Superior Court. The action shall be commenced by filing a verified complaint by a parent or guardian on behalf of the minor and shall contain the date of birth of the minor and shall state: (1) that the application is not made with the intent to avoid creditors or to obstruct criminal prosecution or for other fraudulent purposes; (2) whether the minor has ever been adjudicated delinquent or convicted of a crime and if so, the nature of the crime and the disposition/sentence imposed; (3) whether any criminal charges are pending against the minor and if so, such detail regarding the charges as is reasonably necessary to enable the Division of Criminal Justice or the appropriate county prosecutor to identify the matter. If criminal charges are pending, a copy of the complaint shall be served, at least 20 days prior to the hearing, upon the Director of the Division of Criminal

Justice to the attention of the Records and Identification Section if the charges were initiated by the Division, and otherwise upon the appropriate county prosecutor. Service upon the Division or a prosecutor shall be accompanied by a request that the official make such response as may be deemed appropriate.

(c) Change of Name of Adults and Children in Same Family. An action for change of name of both adults and children in the same family shall be filed and heard in the Family Part of the Chancery Division of the Superior Court and shall follow the same process as set forth in R. 4:72-1(b).

Note: Source-R.R. 4:91-1. Amended July 11, 1979 to be effective September 10, 1979; amended July 15, 1982 to be effective September 13, 1982; amended November 1, 1985 to be effective January 2, 1986; amended July 13, 1994 to be effective September 1, 1994; former text of rule designated as paragraph (a) and amended, paragraph (a) caption added, and new paragraph (b) adopted July 9, 2008 to be effective September 1, 2008; paragraph (a) caption amended and former text amended and designated as new subparagraph (a)(1), new subparagraph (a)(2) adopted, paragraph (b) amended, and new paragraph (c) adopted _____ to be effective _____.

The Working Group also recommends adding the following subparagraph

(a)(4)(A) to R. 4:3-1:

Name change applications shall be governed by R. 4:72-1.

B. PARTITION

Policy: If the only relief sought is a partition, regardless of whether there is a family or family-type relationship, this matter shall be filed and heard in the General Equity Part. A family or family-type relationship is not relevant to property ownership. The issues before the court would be the same whether the joint ownership was simply an investment or the parties' home, which addresses credits such as who paid more and the percentage of ownership. If, however, other forms of relief are sought which are affected by the family-type relationship, it shall be filed and heard in the Family Part. This is consistent with the rationale articulated in Olson v. Stevens, 322 N.J. Super. 119 (App. Div. 1999). Such reliefs include, but are not limited to, spousal support, child support, custody, parenting time, property distribution and palimony.

The Working Group discussed scenarios involving related persons where the only relief sought is partition. Examples include married persons or siblings who co-own property seeking only partition. The policy requires those actions be filed and heard in the General Equity Part. The Working Group discussed how best to clarify the policy when a partition action is filed with a family relief. In that situation, the action is filed and heard in the Family Part. The Working Group thought it best to include examples of family or family-type reliefs within the rule. Family reliefs include divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony. To memorialize the policy, the Working Group recommends adding the following subparagraph (a)(4)(B) to R. 4:3-1:

If partition is the only relief sought, regardless of whether there is a family or family-type relationship, the matter shall be filed and heard in the Chancery Division, General Equity Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

C. ENFORCEMENT OF JUDGMENTS

Policy: Motions to enforce Family Part judgments including child support, equitable distribution and alimony shall be heard in the Family Part. Proceedings filed pursuant to Rules 4:59 through 4:61, which arise out of a Family Part judgment, shall proceed in the Family Part.

According to the Working Group, actions to enforce judgments may become an application for modification of that judgment, especially in Family actions. The Working Group agreed that the policy recognizes a Family judge will address issues such as child support, equitable distribution and alimony if they are raised in an enforcement application. The Working

Group agreed that the enforcement of judgments generally should be heard in the Part where the judgment originated, except if otherwise provided in the court rules. The Working Group therefore recommends language to that effect. The Working Group determined the rule recommendation should include “applications” in addition to “motions” because in the non-dissolution docket type, this is the appropriate terminology to seek relief from the court. The Working Group therefore recommends adding the following subparagraph (a)(4)(C) to R. 4:3-1:

Motions or applications to modify or enforce Family Part judgments, and any proceeding that seeks civil relief only pursuant to Rules 4:59 through 4:61, 6:7 and 6:8, shall be brought in the Chancery Division, Family Part, under the existing Family Part judgment. All motions or applications to modify or enforce a judgment shall be brought in the Division and Part where the judgment was entered, except as otherwise provided in the court rules.

D. PALIMONY

Policy: All palimony applications shall be filed and heard in the Family Part.

The Working Group recommends memorializing the language of the policy as R. 4:3-1(a)(4)(D) as follows:

All palimony applications shall be filed and heard in the Family Part.

E. PARENTING TIME/VISITATION

Policy: All parenting time/visitation issues relating to children shall be filed and heard in the Family Part. However, visitation/parenting time relating to adults only shall be filed and heard in General Equity. This policy supersedes Shambaugh v. Wolk, 302 N.J. Super. 380 (Ch. Div. 1996). General Equity shall hear and decide these issues relating to adults. Actions seeking visitation of an adjudicated incapacitated person shall be filed and heard in the Probate Part.

The Working Group discussed the policy as to adults and determined General Equity is intended to address parenting time/visitation for adults who have not been adjudicated incapacitated, and Probate Part is intended to address parenting time/visitation for adults adjudicated incapacitated where a guardian has been appointed. The Working Group therefore recommends adding the following subparagraph (a)(4)(E) to R. 4:3-1:

All parenting time/visitation issues relating to minors shall be filed and heard in the Chancery Division, Family Part. Parenting time/visitation issues related to adults shall be filed and heard in the Chancery Division, General Equity Part, except that actions seeking visitation of adjudicated incapacitated adults shall be filed and heard in the Chancery Division, Probate Part.

F. PETS

Policy: If the only issue involves ownership of a pet, the matter shall be filed and heard in the Civil Part. If, however, there are other issues related to a family or family-type relationship, then the issue of the pet shall be included within those claims and filed and heard in the Family Part.

To codify the policy, the Working Group determined to replicate the language recommended with regard to partition, which includes examples of reliefs arising out of a family or family-type relationship (e.g., divorce, termination of domestic partnership, dissolution of civil union, spousal and child support, custody, parenting time, property distribution and palimony). The Working Group also discussed it might be appropriate to hear pet actions in the Chancery Division, General Equity Part, but determined the charge of the Working Group did not include expanding the policy. The Working Group discussed addressing in this subparagraph the enforcement of judgments arising out of a pet action, but determined the subparagraph governing enforcement of judgments covers this topic. The Working Group recognized that existing case law may conflict with the policy recommendations regarding pets, but determined

these rule recommendations should not follow existing case law. Rather, these recommendations are intended to provide uniformity for the filing of future cases involving pets. The Working

Group recommends adding the following subparagraph (a)(4)(F) to R. 4:3-1:

If ownership interest or monetary damages pertaining to pets is the only relief sought, the matter shall be filed in the Law Division, Civil Part or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

G. PERSONAL POSSESSIONS

Policy: If the division of personal property is the only issue, the matter shall be filed and heard in the Civil Part. This policy expressly departs from the approach in Dey v. Varone, 333 N.J. Super. 616 (Ch. Div. 2000). If, however, other forms of relief related to the family relationship are sought with this relief, then all claims for relief shall be filed and heard in the Family Part.

To codify the policy, the Working Group determined to replicate the language recommended for partition and pets, which includes examples of reliefs arising out of a family or family-type relationship (e.g., divorce, termination of domestic partnership, dissolution of civil union, spousal and child support, custody, parenting time, property distribution and palimony). The Working Group recommends adding the following subparagraph (a)(4)(G) to R. 4:3-1:

If the division of personal property is the only issue, the matter shall be filed and heard in the Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

H. EJECTMENT

Policy: This action shall primarily be filed and heard in the Civil Part. However, if other requests for relief related to a family relationship, such as custody or child support, are included with an ejectment claim then the action shall be filed and heard in the Family Part. A counterclaim of palimony to an ejectment complaint filed in the Civil Part requires that complaint to be transferred to the Family Part.

To memorialize the policy, the Working Group determined to replicate the language recommended with regard to partition, pets and personal possessions, which includes examples of reliefs arising out of a family or family-type relationship (e.g., divorce, termination of domestic partnership, dissolution of civil union, spousal and child support, custody, parenting time, property distribution and palimony). The Working Group recommends adding the following subparagraph (a)(4)(H) to R. 4:3-1:

If ownership interest or monetary damages pertaining to ejectments is the only relief sought, the matter shall be filed in the Law Division, Chancery Division - General Equity or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

I. REQUESTS FOR TRANSCRIPT OF CLOSED FAMILY COURT PROCEEDINGS MADE IN A CIVIL ACTION

Policy: An application shall be made to the Civil Part to determine the disclosure of the Family Part transcript and to establish whether any conditions should be attached to the provision of the transcript. The parties to the Family Part matter and the judge who presided over the Family Part hearing must be noticed of this application.

The Working Group had concerns regarding the policy as follows:

- The judge who presided over the Family Part hearing may be retired or otherwise not available. The Working Group believes the policy should permit noticing the Family Presiding Judge if the original judge is not available.
- The role of the Family Part judge in the proceeding is not defined. The Working Group questioned whether, upon receiving notice, the Family Part judge's role is to take a position on the motion or limited to providing information. The Working Group expressed concerns that the Civil and Family Part judges might have different opinions on whether the transcript should be released. The Working Group requests the Civil and Family Practice Committees² to provide input on the issue and advise if the Conferences of the Civil and Family Presiding Judges should make a recommendation.
- The policy does not address the steps the filer of such an application must take to attempt to locate and notice the parties, where many years may have passed since the Family Part action concluded.

Although the Working Group raises these issues, it concluded that recommendations to address them are outside the scope of its charge.

The Working Group therefore recommends adding the following subparagraph (a)(4)(I) to R. 4:3-1:

Where, in a Civil Action, a request for a transcript is made of a Family Court proceeding deemed closed by Rule of Court, Court Order or statute, an application shall be made in the Civil Part to determine the disclosure of the Family Part transcript and to establish whether any conditions should be attached to the provision of the transcript. The parties to the Family Part matter and the

² At the request of the FPC, the Conference of Family Presiding Judges (Conference) was asked to provide input on the policy regarding "Requests for Transcript of Closed Family Court Proceedings made in a Civil Action." The Conference believes noticing the Family Part judge on the application should not mandate the participation of the Family Part judge in the decision. The Civil Part judge may determine the issue, and the Civil Part judge always has the discretion to consult with the Family Part judge if necessary.

judge who presided over the Family Part hearing shall be noticed of the application.

J. BIRTH CERTIFICATES AND MARRIAGE CERTIFICATES

Policy: Applications seeking to alter the name of a biological father on a birth certificate shall be filed and heard in the Family Part. Applications for issuance of a vital record in cases in which the Bureau of Vital Statistics declines to act, such as a request for a delayed certificate of birth, shall be filed in the Civil Part as an action in lieu of prerogative writ. If the county of venue is unknown (e.g., an applicant asserts that he or she was born in New Jersey but does not know in which county), then application may be made to the Civil Division in Mercer County on the basis of convenience to the State Registrar. Otherwise, the action in lieu of prerogative writ shall be filed in the county having jurisdiction over the event at issue (e.g., birth in Essex or marriage in Somerset).

The Working Group discussed whether the policy is intended be limited to the correction of misspellings on birth certificates or is also intended to correct the identity of a person listed therein. The Working Group determined the policy was likely intended to cover both situations. The Working Group also discussed the limiting nature of the term "biological father." There are many types of parental relationships reflected on a birth certificate. Two mothers in a same-sex marriage, civil union or domestic partnership could be the parents listed on a birth certificate. A husband might be listed on a birth certificate as a parent of his wife's child, although he may not be the biological father. For these reasons, the Working Group recommends the term "parent" instead of "biological father."

The Working Group discussed whether the policy of altering the name of a parent on a birth certificate is intended to be limited to applications filed on behalf of minors. The Working Group considered scenarios whereby the applicant seeking to alter the name of a parent on a birth certificate might be an adult or filing on behalf of an adult. For example, an adult seeking to apply for dual citizenship may need to file an application to correct a name of a parent on the

birth certificate. Such cases would be appropriately decided in the Law Division. Another example is a posthumous application to alter the name of a parent on a birth certificate. Such case would appropriately be heard in Chancery Division, Probate Part. For this reason, the Working Group recommends language limiting the policy so applications seeking to alter the name of a parent on a birth certificate be filed and heard in the Family Part only if the application is filed on behalf of a minor.

Pursuant to the Supreme Court's policy, in situations where the applicant asserts he or she was born in New Jersey but does not know the county of birth, those applications shall be filed in the Civil Division of Mercer County.

The Working Group recommends adding the following subparagraph (a)(4)(J) to

R. 4:3-1:

Applications seeking to alter the name of a parent on a birth certificate shall be filed and heard in the Family Part if the application is filed on behalf of a minor. Applications for issuance of a vital record in cases in which the Bureau of Vital Statistics declines to act, such as a request for a delayed certificate of birth, shall be filed in the Civil Part as an action in lieu of prerogative writ. If the county of venue is unknown then application may be made to the Civil Division in Mercer County on the basis of convenience to the State Registrar. Otherwise, the action in lieu of prerogative writ shall be filed in the county where the birth or marriage took place.

K. POST-JUDGMENT RELIEF RELATING TO INCAPACITATED ADULT CHILD OF PARENTS SUBJECT TO FAMILY PART ORDER.

Policy: Where issues including custody, visitation, and support of an unemancipated child are addressed in a Final Judgment of Divorce or other Family Part order and the child, upon reaching adulthood, is thereafter adjudicated incapacitated, the terms of the guardianship judgment may conflict with the Family Part orders. Such post-judgment relief shall be filed and heard in the Probate Part, with notice as appropriate to any court-appointed attorney or guardian ad litem for the incapacitated person as well as the County Surrogate.

The Working Group discussed whether the termination of child support legislation effective February 1, 2017 affects the policy, in that "child support" may be paid for a child until age 23. Once the child turns age 23, the child is deemed emancipated and any financial support paid by a parent is now deemed "financial maintenance." The Working Group recommends the policy include clarifying language to reflect this change in the law. The Working Group further recommends replacing "visitation" with "parenting time/visitation" as this is how visitation is presently referenced.

The Working Group also recommends eliminating the requirement to notice any court-appointed attorney or guardian ad litem for the incapacitated adult child as well as the County Surrogate. Notice to the County Surrogate is unnecessary because the application for custody, visitation or support would be filed with the County Surrogate, which acts as the deputy clerk of the court in Probate matters. Notice to any former court-appointed attorney or guardian ad litem is ineffective because their services would have been discharged under the terms of the Order for Guardianship.

The Working Group thus recommends adding the following subparagraph (a)(4)(K) to R. 4:3-1:

Where issues including custody, parenting time/visitation, and support of an unemancipated minor child are addressed in a Chancery Division, Family Part order, and a judgment of incapacity and appointment of guardian are entered after the child reaches majority, modification or enforcement of such terms in the Family Part order shall be filed and heard in the Chancery Division, Probate Part. However, if child support or custody/parenting time/visitation issues affecting child support are present, those matters shall be heard in Chancery Division, Family Part until the incapacitated child turns age 23.

Rule Recommendation -- R. 4:3-1

Based upon the above, the Working Group incorporates the following amendments to Rule 4:3-1.

Rule 4:3-1. Divisions of Court; Commencement and Transfer of Actions

(a) Where Instituted.

(1) Chancery Division-General Equity. . . . no change.

(2) Chancery Division-Probate Part. . . . no change.

(3) Chancery Division-Family Part. All civil actions in which the principal claim is unique to and arises out of a family or family-type relationship shall be brought in the Chancery Division, Family Part. Civil family actions cognizable in the Family Part shall include all actions and proceedings [provided for] referenced in [of] Part V of these rules, except as specified below in subparagraph (4); all civil actions and proceedings formerly cognizable in the juvenile and domestic relations court; and all other actions and proceedings unique to and arising out of a family or family-type relationship.

(4) Specific Case Types. The following types of cases shall be brought in the Part specified:

(A) Name Change. Name change applications shall be governed by R. 4:72-1.

(B) Partition. If partition is the only relief sought, regardless of whether there is a family or family-type relationship, the matter shall be filed and heard in the Chancery Division, General Equity Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(C) Enforcement of Judgments. Motions or Applications to modify or enforce Family Part judgments, and any proceeding that seeks civil relief only pursuant to Rules 4:59 through 4:61, 6:7 and 6:8, shall be brought in the Chancery Division, Family Part, under the existing Family Part judgment. All motions or applications to modify or enforce a judgment shall be brought in the Division and Part where the judgment was entered, except as otherwise provided in the court rules.

(D) Palimony. All palimony applications shall be filed and heard in the Family Part.

(E) Parenting Time/Visitation. All parenting time/visitation issues relating to minors shall be filed and heard in the Chancery Division, Family Part. Parenting time/visitation

issues related to adults shall be filed and heard in the Chancery Division, General Equity Part, except that actions seeking visitation of adjudicated incapacitated adults shall be filed and heard in the Chancery Division, Probate Part.

(F) Pets. If ownership interest or monetary damages pertaining to pets is the only relief sought, the matter shall be filed in the Law Division, Civil Part or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(G) Personal Possessions. If the division of personal property is the only issue, the matter shall be filed and heard in the Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(H) Ejectment. If ownership interest or monetary damages pertaining to ejectments is the only relief sought, the matter shall be filed in the Law Division, Chancery Division - General Equity or Law Division, Special Civil Part. If other forms of relief are sought which are affected by the family or family-type relationship, including but not limited to divorce, termination of domestic partnership, dissolution of civil union, spousal support, child support, custody, parenting time, property distribution and palimony, the matter shall be filed and heard in the Chancery Division, Family Part.

(I) Requests for Transcripts of Closed Family Court Proceedings Made in a Civil Action. Where, in a Civil Action, a request for a transcript is made of a Family Court proceeding deemed closed by Rule of Court, Court Order or statute, an application shall be made in the Civil Part to determine the disclosure of the Family Part transcript and to establish whether any conditions should be attached to the provision of the transcript. The parties to the Family Part matter and the judge who presided over the Family Part hearing or the Presiding Family Judge shall be noticed of the application.

(J) Birth Certificates and Marriage Certificates. Applications seeking to alter the name of a parent on a birth certificate shall be filed and heard in the Family Part if the application is filed on behalf of a minor. Applications for issuance of a vital record in cases in which the Bureau of Vital Statistics declines to act, such as a request for a delayed certificate of birth, shall be filed in the Civil Part as an action in lieu of prerogative writ. If the county of venue is unknown then application may be made to the Civil Division in Mercer County on the basis of convenience to the State Registrar. Otherwise, the action in lieu of prerogative writ shall be filed in the county where the birth or marriage took place.

(K) Post-Judgment Relief Relating to Incapacitated Adult Child of Parents Subject to Family Part Order. Where issues including custody, parenting time/visitation,

and support of an unemancipated minor child are addressed in a Chancery Division, Family Part order, and a judgment of incapacity and appointment of guardian are entered after the child reaches majority, modification or enforcement of such terms in the Family Part order shall be filed and heard in the Chancery Division, Probate Part. However, if child support or custody/parenting time/visitation issues affecting child support are present, those matters shall be heard in Chancery Division, Family Part until the incapacitated child turns age 23.

[4] (5) Law Division. All actions in the Superior Court except those encompassed by subparagraphs (1), (2), [and] (3) and (4) herein shall be brought in the Law Division or Law Division, Special Civil Part.

(b) Transfer Between Law and Chancery Division . . . no change.

Note: Source-R.R. 4:41-2, 4:41-3, 5:1-2. Paragraphs (a) and (b) amended and caption amended July 22, 1983 to be effective September 12, 1983; new paragraph (a) adopted and paragraph (b) amended December 20, 1983 to be effective December 31, 1983; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; subparagraph (a)(1) amended, subparagraph (a)(2) recaptioned and adopted, former subparagraphs (a)(2) and (a)(3) redesignated (a)(3) and (a)(4) respectively, and subparagraph (a)(4) amended June 29, 1990 to be effective September 4, 1990; new subparagraphs (a)(4)(A) through (a)(4)(K) adopted and former subparagraph (a)(4) amended and redesignated as subparagraph (a)(5) _____ to be effective _____.

Rule Recommendation -- R. 5:1-2

Based upon the above, the Working Group recommends the following amendments to

Rule 5:1-2.

Rule 5:1-2. Actions Cognizable

The following actions shall be cognizable in the Family Part:

(a) Civil Family Actions Generally. All civil actions in which the principal claim is unique to and arises out of a family or family-type relationship shall be brought in the Family Part[.], including those actions specified in Rule 4:3-1(a)(4) and Rule 4:72-1(a)(2) and (b) as well as proceedings referenced [Such actions shall include all actions provided for] in Chapters II and III of Part V; all civil actions and proceedings formerly designated as matrimonial actions; actions that arise under the Domestic Partnership Act, N.J.S.A. 26:8A-1 et seq.; actions arising under N.J.S.A. 37:1-28 et seq. relating to civil unions; all civil actions and proceedings formerly cognizable in the Juvenile and Domestic Relations Court; and all other civil actions and proceedings unique to and arising out of a family or a family-type relationship.

(b) . . . no change.

(c) . . . no change.

Note: Source-new. Adopted December 20, 1983, to be effective December 31, 1983; paragraph (c)(1) amended June 28, 1996 to be effective September 1, 1996; paragraph (a) amended June 15, 2007 to be effective September 1, 2007; paragraph (a) amended _____ to be effective _____.

Rule Recommendation -- R. 6:1-2

Based upon the above, the Working Group recommends the following amendments to

Rule 6:1-2.

Rule 6:1-2. Cognizability

(a) Matters Cognizable in the Special Civil Part. The following matters shall be cognizable in the Special Civil Part, and as per R. 4:3-1(a)(4), insofar as applicable:

(1) Civil actions (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) seeking legal relief when the amount in controversy does not exceed \$ 15,000;

(2) Small claims actions, which are defined as all actions in contract and tort (exclusive of professional malpractice, probate, and matters cognizable in the Family Division or Tax Court) and actions between a landlord and tenant for rent, or money damages, when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of \$ 3,000. Small claims also include actions for the return of all or part of a security deposit when the amount in dispute, including any applicable penalties, does not exceed, exclusive of costs, the sum of \$ 5,000. The Small Claims Section may provide such ancillary equitable relief as may be necessary to effect a complete remedy. Actions in lieu of prerogative writs and actions in which the primary relief sought is equitable in nature are excluded from the Small Claims Section;

(3) Summary landlord/tenant actions;

(4) Summary actions for the possession of real property pursuant to N.J.S.A. 2A:35-1 et seq., where the defendant has no colorable claim of title or possession, or pursuant to N.J.S.A. 2A:39-1 et seq.;

(5) Summary proceedings for the collection of statutory penalties not exceeding \$ 15,000 per complaint.

(b) Distinct Negligence Claims . . . no change.

(c) Waiver of Excess . . . no change.

Note: Adopted November 7, 1988 to be effective January 2, 1989; caption added to paragraph (a) and paragraph (a) amended July 17, 1991 to be effective immediately; paragraphs (a)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(1) and (2) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a)(1) and (a)(2) amended July 12, 2002 to be effective September 3, 2002; paragraph (a)(2) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(4) and paragraph (c) amended July 27, 2006 to be effective September 1, 2006; subparagraphs(a)(1) and (a)(2) amended, new subparagraph (a)(4) adopted, former subparagraph (a)(4) redesignated as subparagraph (a)(5), and former subparagraph (a)(5)

deleted July 19, 2012 to be effective September 4, 2012; paragraph (a) amended
to be effective.

The Working Group thanks the Supreme Court for this opportunity to serve.

Respectfully submitted,

Hon. Karen M. Cassidy, Chair

SUPREME COURT WORKING GROUP ON THE CLARIFICATION OF DIVISIONS –
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