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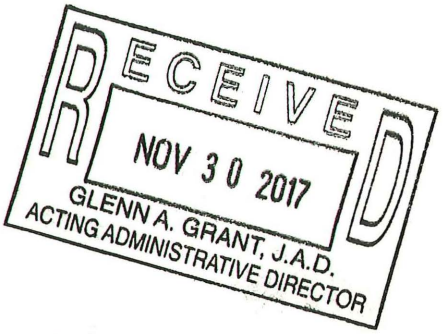


**Via Email and Regular Mail**
Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts
Attention: Comments on Filing Particular Categories of Cases
Hughes Justice Complex
25 W. Market St., P.O. Box 037
Trenton, NJ 08625-0037

**Re: Proposed Changes to Rule 4:72 - Name Changes for Minors**

Dear Judge Grant:

Please accept this letter as my comments and objections to the proposed changes to Rule 4:72 requiring that all name changes for minors be filed in the Family Part of the Chancery Division. In this regard, I am writing in both my professional capacity as an attorney who handles name change applications on behalf of parents seeking to change their child's name, and in my personal capacity as a transgender woman. While I recognize that the proposed changes to Rule 4:72 deal with all name change applications for minors, I write because of my deep and abiding concern about the impact of the proposed changes on transgender minors and their parents.

According to the Recommendations to Implement Policies included with the announcement of the proposed rule changes, the policy reason behind the change to R. 4:72 requiring that name changes for minors "be filed and heard in the Family Part" is that these proceedings involve "the best interests of the child." I respectfully disagree.

Absent extraordinary circumstances[1], a name change for a minor child when both parents consent[2], does not implicate or require a best interest of the child analysis. Parents name their children everyday without Court supervision. Accordingly, there is no reason why parents cannot mutually agree to rename their child without a Court reviewing whether or not that decision is in the child's best interest.

The proposed rule changes are of particular concern when the name change is for a transgender child. In this regard, the proposed changes, when read in conjunction with the recently published decision in *Sacklow v. Betts*, 450 N.J. Super. 425 (Law Div. 2017), may lead judges to conclude that in any name change proceeding involving a transgender child, the court must conduct a hearing requiring the parents to establish through competent proofs that their child is transgender in order to satisfy a best interest of the child analysis. Frankly, such a conclusion would be both offensive and discriminatory

Requiring a transgender individual to justify their choice of name is also contrary to existing law, which provides that a name chosen by a transgender individual is "a matter which is of no concern to the judiciary, and which has no bearing upon the outcome of a simple name change application." *Matter of Eck*, 245 N.J. Super 220, 223 (App. Div. 1991). Simply because the transgender individual is a minor does not justify court intervention when both parents consent.

Gender identity is a protected class under the New Jersey Law Against Discrimination (LAD). In no other situation involving a name change for a member of a protected class do we require the parents to prove that a name change is in their child's best interest. Imagine a situation where parents were converts to a new religion and wanted to change their child's name so that it was more in keeping with their religious beliefs. To suggest that a court should review that parental decision and decide whether it was in the child's best interest would be considered outrageous. Yet, there is now a published decision in this state that lays out criteria for judges to consider in deciding if allowing a transgender child to change their name is in their best interest. Even in 2017, and even in New Jersey, we still question the bona fides of transgender individuals and of their parents. The proposed rule change requiring that name changes for minors be heard in the Family Part will only reinforce the notion that a court can deny a name change for a transgender child, even when both parents consent, if the court is not satisfied it is in the child's best interest.

The proposed rule change will also place an additional emotional burden on the parents of a transgender child, as well as on the child. Parents often struggle with accepting their child when a child's gender identity does not correspond to the child's assigned sex at birth. According

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[1] To the extent that a Court reviewing a name change application has concerns about potential abuse of a child, for example naming the child after a notorious historical figure, the Court, be it the Law Division or the Chancery Division, always has the inherent power to contact DCP&P.

[2] In those cases where both parents do not consent, the law already requires a best interest analysis. *Emma v. Evans*, 215 N.J. 197 (2013).

to all medical and mental health providers who specialize in treating transgender children, the most important factor in maintaining the emotional health of the child is acceptance and support from their parents and family. Thus, the parents' decision to file a name change on behalf of their transgender child is often critically important to their child's well being. This decision is also deeply personal and private. To force these parents to go into a courtroom and have a judge, who may be totally unfamiliar with gender identity issues, rule upon the merits of their decision is totally unwarranted and potentially damaging to the child.

Because of my own status as one of the few out and open transgender attorneys in the state, I suspect that I represent as many parents of transgender children as any lawyer in New Jersey. I have witnessed first hand the intensely personal issues that are involved when parents decide to allow their child to live in accordance with their gender identity. Often parents face backlash from their family, friends and school personnel regarding their decision to allow their child to live as their true selves. To now add to that burden by requiring the parents to come to court and convince a total stranger, albeit a judge, that their decision is in their child's best interest, is creating one more hurdle for them to overcome in their efforts to keep their child safe.

In this regard, I was personally involved as counsel in a matter where a Judge, in a case where both parents consented to their child's name change, questioned the mother of a transgender minor, as well as the minor herself (age 14), over my objections, on the record, in open court, concerning the treatment the child was undergoing, the length of time the child had these "inclinations" and other very personal information concerning the minor's gender identity. Needless to say, this was extremely embarrassing and painful for both the mother and minor (as well as their counsel) to be asked questions of this nature in open court when there was absolutely no reason to do a best interest of the child analysis. My fear is that if the proposed rule changes are adopted, the above situation will be the norm, as opposed to a very unfortunate exception.

In addition to representing parents of transgender children, I counsel probably an equal number of parents who simply cannot afford to retain my services to change their child's name. In this regard, I try to provide as much information as I can to assist them in representing themselves in the process. But even now, without the added burden of going through a hearing to establish the name change is in their child's best interest, the process can be daunting, both procedurally and financially. Even without a lawyer, the name change process is expensive. Filing and other fees are usually in excess of $500. This can be an insurmountable hurdle for some families. Additionally, not all families have access to medical and mental health care providers who can provide medical and therapeutic support to them and their child. In those cases where parents cannot afford to obtain medical or other treatment for their child, I am concerned that a judge may find that there was "insufficient" proof to establish that the name change was in the child's best interest. By adding yet another issue for self represented families to overcome, I fear that we are inhibiting access to the courts to the very people who need help the most.

I want to make it clear that I am not in any way questioning the good faith of the Working Group or the Practice Committees that have made the recommendation to change Rule 4:72. Likewise, I do not intend to question the good faith of the Court or counsel in *Sacklow*. I firmly believe that all were well intentioned. Unfortunately, even the best of intentions can result in unfortunate consequences when all of the issues are not properly understood or explored. Certainly, I do believe that some rule changes involving name changes for minors would be appropriate – filing with initials of the parties; allowing pleading with full names to be filed under seal; and, waiving the publication requirements would all be positive changes. Unfortunately, I do not believe the current proposed changes adequately address these issues and open the door for the concerns I have expressed herein.

Finally, I want to make clear that my comments are not directed at the Judges who sit in the Family Part. On those occasions where name change applications that I have filed on behalf of minors were transferred to the Family Part, with the one exception previously referenced, my clients have been treated with dignity and respect. It is not the Family Part that I object to; it is the fact that matters involving minors in the Family Part inherently involve the Court looking to the best interest of the child that I believe is problematic.

While I understand that the Supreme Court may not take testimony on these proposed rule changes, to the extent the Court does, I would respectfully request to be heard on these issues. I believe I come to the issues from a unique perspective and I would welcome the opportunity to share that perspective with the Court.

Thank you for considering my position.

Respectfully submitted,
**GluckWalrath LLP**

By: _____
Robyn B. Gigl

RBG:plf