#003

dated 12/1/17

Via Email: comments.mailbox@njcourts.gov

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

Re: Proposed Change to Court Rule 4:72

Dear Judge Grant:

This letter is being submitted in opposition to the proposed change to Court Rule 4:72 dealing with name changes involving minors.

While the undersigned are specifically concerned about the impact the rule will have upon transgender children, we oppose the rule based on its impact on all parents and children.

N.J.S.A. §2A:52-1 currently sets forth the requirements for the filing of a name change in the State of New Jersey. Under the statute there is no difference in the requirements or standards that apply to a change of name for an adult or for a minor. Accordingly, it is our position that the proposed amendment to R. 4:72 attempts to change a statute which is not in need of change. Moreover, the impact of the proposed changes on children and their parents would be detrimental and infringe upon their constitutional rights.

As stated in the Recommendations to Implement Policies, the policy reason behind the proposed 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." In fact, it does not. At the time a child is born, no one stands over the shoulders of the child's parents and approves or disapproves their name choice for their child. Similarly, there should not be an evaluation of their decision to re-name their child, providing the child's parents consent to the choice of name.[1]

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[1] The undersigned do not agree with the Court's reasoning in *Sacklow v. Betts*, 450 N.J. Super. 425 (Law Div. 2017). In *Sacklow* the Court established a standard for evaluating the best interest of a transgender child by isolating transgender children as a specific category of person with a special evaluation process associated with their gender identify in order to grant a name change. Not only is this process discriminatory by singling out a class of individuals protected under the New Jersey Law Against Discrimination, the criteria utilized by the Court in *Sacklow* are simply wrong. However, it is important to note that in even in the event of a *dispute* between parents relative to *any* legal custody decision (such as in the *Sacklow* case) those parental decisions would be subject to a best interest evaluation by the Court. Moreover, the Rules of Court currently provide that if a child was the subject of a

Law Division judges have heard name change applications for minors for years and it is the undersigned's experience that civil judges are well-equipped to apply both a civil statute and the existing civil court rules to evaluate these applications. The current version of R. 4:72-1 sets forth the appropriate statutory requirements for a name change application and already has a subsection (b) that deals with a minor or a family that has been involved in a Family Part action within the prior 3 years. In those cases, it has traditionally been an application for a change of surname brought before the court after a divorce or dissolution, and the Family Part judge who heard the divorce or dissolution is uniquely situated to hear those matters. However, in cases where there is *no dispute between the child's legal parents, or where the family does not have a Family Part docket number*, there is no legitimate reason why name changes for minors should not continue to be heard by the Law Division applying the same standard as adult name changes.

If a court has concerns that an isolated extreme situation may arise wherein the Court would have to execute *parens patrie* power to protect a child, DCP&P should be alerted and the name change application would be put on hold pending an investigation. All judges, whether they are sitting in the Family Part or the Law Division, have judicial discretion as well as a mandatory duty to report suspected child abuse or neglect. However, absent any concerns of abuse or neglect, no evaluation of the best interest of the child is appropriate to change a child's name.

If parents consent as to *any other aspect of child-rearing, the court does not insert itself but rather respects parental autonomy.* As the Court is aware, in a custody matter, if the parties enter a consent order or settlement agreement with respect to custody, parenting time, religious upbringing, extracurricular activities, or any other aspect of their children's lives, the Court does not make an evaluation as to the appropriateness of the relief agreed to, but rather respects the parents' own decision- making and enters a judgment. However, if the matter is *contested,* then the Court appropriately evaluates what the appropriate result would be based upon the best interest of a child. If the Court does not invade the parents' privacy (and, in fact, attempts to assist parents to settle by way of Court-ordered mediation, parent education programming, etc.) to determine actual physical custody of a child, it logically follow that the Court should not resort to an evaluation of the child's best interest when the parents consent to a name change for their minor child.

In the case of a child who is transgender, our Appellate Division has already ruled that a transgender applicant's name change is not inherently fraudulent, no matter what (if any) medical or surgical transition the applicant has undergone. Matter of Eck, 245 N.J. Super. 220 (App. Div. 1991). Therefore, absent some other improper purpose or suspicion of abuse or neglect, if both parents consent to a minor child's name change then same should be granted without resort to best interest inquiries.

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family court matter within 3 years of filing for a name change, the matter would come before the Family Court. Thus, *contested* matters are ones in which parents are inviting the Court to become involved in their parental decision making because they cannot agree.

Additionally, requiring parents of transgender children to prove to a Judge that a name change is in the best interests of their child imposes an additional burden upon these children and families, thereby impeding their access to the courts. This impediment can have a significant detrimental impact on the physical and psychological well-being of these children. The stress, anxiety, depression, and potential harassment, intimidation, bullying, or violence that comes when a transgender child is called the wrong name in public or in schools, has identification documents with the wrong name---these all make for significant negative health and wellness outcomes.

The cost to families to litigate a matter that is *uncontested* and to expend significant financial resources to acquire medical experts, whose testimony may be necessary in a best interest context, cannot be ignored. This cost may prevent low or lower income parents from accessing the court and obtaining a name change that may be vital to their child's physical and emotional health. Moreover, as set forth throughout this letter, there is no reason why parental autonomy to name or change the name of their child should be infringed when there is consent, absent a concern over abuse and neglect.

Finally, the filing of these matters in the family division would be fraught with technical complications given the documentary requirements. For example, if these matters were to be required to be filed under the "FD"/non-dissolution docket, then FD forms and procedures would be required. As such, due to the systems in place, filing a matter that does not have a "defendant," cannot have a completed Confidential Litigant Information Sheet, and that does not ascribe to a "check box" form would be seriously problematic. Similarly, name changes for minors are often filed in the Law Division with initials and a Motion to Seal and Waive Publication in order to protect the child's confidential medical information. The FD forms do not allow for the filing of complaints with initials and, therefore, can procedurally delay the filing and eventual hearing of the name change application, which puts transgender children at greater risk for physical and psychological harm.

To the extent that these matters will be filed in the Family Part, we would respectfully request that the Court take the opportunity to ensure that the process is standard for all children and that children and parents are actually being protected. This could be accomplished by the creation of a separate docket number, similar to an FA/Adoption docket, where the application is automatically sealed and publication waived for minors so as to protect the minor's privacy. Since there is no public interest in making a minor's name change a matter of public record, the Court should ensure that the privacy interest of the child is protected. Moreover, we would ask that guidance be issues to the Judges that, just like in a custody/parenting time situation, if parties consent to the relief requested, there would be no need for an evaluation by the Court, absent some independent concern for a child's welfare.

Based upon these concerns, the undersigned practitioners respectfully request that the proposed rule changes relative to minor name changes not be implemented and that instead, a working group, including practitioners of transgender children's rights, legal organizations

protective of parents' constitutional rights, experienced health care professionals, and parents be formed to help create a different solution to the Court's perceived problem with the existing Rules of Court, or that, at a minimum, these individuals and groups be provided the opportunity to testify as to the proposed rule changes.

Respectfully submitted,

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