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VIA EMAIL

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Acting Administrative Director of the Courts
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Re: *Comments on Procedural Recommendations by the New Jersey Supreme Court Committee on Minority Concerns regarding Name Change Matters Heard in the Family Part*

Dear Judge Grant:

The American Civil Liberties Union of New Jersey (ACLU-NJ) and North Jersey Pride write to express support for Recommendation 2019:13 in the 2017-2019 Report of the New Jersey Supreme Court Committee on Minority Concerns, which would codify best practices for minors' name changes in the Family Part.

The ACLU-NJ advocates for the civil rights and civil liberties of all New Jerseyans and has long championed protections for transgender, gender nonconforming, and non-binary people. North Jersey Pride is dedicated to advancing equality and building community for LGBTQ families, including through its RAD Family program, which provides a social support network for families of transgender and gender fluid youth.

The ACLU-NJ and North Jersey Pride/RAD Family agree that the proposals put forward by the Supreme Court Committee on Minority Concerns (SCCMC) are compassionate, common-sense, and consistent with principles of procedural fairness. New Jersey's Court Rules already allow for the use of initials, sealing of unredacted records, waiver of publication requirements, and adjudication without a child's in-court appearance in certain cases. But currently, not every family can benefit from these practices. Without a lawyer's assistance, many will not know that there exist opportunities to protect a child's privacy during the name change process, and more still will not know how to successfully pursue those opportunities. SCCMC's recommendations would streamline, standardize, and democratize privacy-protective practices, so that financial means and disparate judicial norms do not pose barriers to justice.

Especially for transgender, gender non-conforming, and non-binary children, name changes can be affirming and liberating. They can also be a matter of safety and practical necessity. Prejudice and hostility toward transgender, gender non-conforming, and non-binary people remain widespread. A national survey, for example, found that 59.1 percent of LGBT students faced verbal harassment in school based on their gender expression. Joseph G. Kosciw, et al., *The 2017 National School Climate Survey*, GLSEN 25 (2018), <https://www.glsen.org/sites/default/files/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf>. 24.4 percent faced physical harassment in school based on their gender expression. *Id.* And 42.1 percent of transgender students had been prevented from using their preferred name. *Id.* at 42.

The legal process to effectuate a name change should not increase a child's risk of facing harm, alienation, and involuntary outing. With the adoption of Recommendation 2019:13, courts can become places of safety and acceptance for children. Courts can counteract harassment and stigmatization, rather than contribute to it.

Recommendation 2019:13 reflects three core aims: (1) to protect children's safety and privacy; (2) to promote equity and access to justice; and (3) to provide affirmation and support to children and families. This letter includes the voices of RAD Family parents, who have shared their first-hand experiences with the name-change process and spoken powerfully to the need to implement rule changes that serve all three objectives.

1. PROTECTING CHILDREN'S SAFETY AND PRIVACY

Where a child wishes to pursue a name change privately, courts advance the child's best interests by allowing the use of initials, sealing unredacted records, disposing of the publication requirement, and issuing summary judgments on the papers in uncontested cases. There is no countervailing public or governmental interest in outing a child against their will. In fact, "New Jersey has a compelling interest in protecting the physical and psychological well-being of minors, including lesbian, gay, bisexual, and transgender youth." N.J.S.A. § 45:1-54(n).

As V.,¹ a parent of a transgender child, explains, "the right to privacy is a right held dear by many people. For transgender people, privacy is so much more; it can be a matter of life or death, security or distress."

V. spoke about their duty to guard their child's privacy in order to shield their child from harm:

"As the parent of a transgender child I have to think about privacy every day. In an age that allows for the mass consumption of information, I am a guardian of my child's story, keeping a careful watch over what information

¹ All parents quoted in this letter are identified by an initial they have chosen. Initials are used to preserve the parents' anonymity and privacy and that of their children. The parents are members of RAD Family who volunteered to share their experiences pursuing their children's name changes.

may end up online and therefore a quick google search away from exposing a story that is not mine or anyone else's to tell. I do not watch over this story out of shame for my child's truth. I do it out of my duty to protect. While transgender people have seen some gains in rights and have certainly become more visible to the larger society, transgender people, especially trans people of color, face disproportionate rates of violence and harassment.

Being part of such a vulnerable community demands safety measures—safety measures that are greatly compromised by institutions that demand the public display of previous names or gender markers. My child's story is his to tell and until he is ready, I work hard to maintain his privacy and build up his confidence to be himself in a world that in many ways is still catching up.”

—V.

Another parent, H., echoed the importance of preserving her child’s privacy until he makes his own decision to share his story. H. also expressed the fear that undertaking the name-change process could undo H.’s own broad-ranging efforts to protect her child:

“I am working so hard to give my nine-year-old transgender son (who is stealth) a conventional ‘boyhood.’ This means that I often have to think ahead for potential outing that might happen across contexts. When we travel, I have him and my husband wear pink shirts so that if someone looks at his gender marker and middle name (his first name is relatively neutral), they'll see him as ‘just a tomboy.’ At school, we've worked with the district to change the online system to avoid a breach in privacy. We do similar things for camps, sports, and even with family.

When I think about all my child has carried in the last few years, through his transition, it makes me shudder. The thought of him being outed in a newspaper without his consent is terrifying and unnecessarily cruel. Nobody should be outed without their consent, and to think that this might happen to my son in elementary school is incredibly painful. A mother should be able to protect her child's privacy, especially with matters as sensitive as this.”

—H.

Privacy during the name change process is vital to children’s dignity, agency, health, and safety.

2. PROMOTING EQUITY AND ACCESS TO JUSTICE

Privacy should not be a luxury reserved for the wealthy, especially where the stakes are so high. The protections of Recommendation 2019:13 are already largely available under existing law to

families who can afford to hire an attorney. *See e.g.*, R. 5:3-2(a) (allowing hearings to be conducted in private and without a child's presence); R. 5:3-2(b) (allowing records to be sealed upon a showing of good cause); R. 1:38-11 (assigning the burden of proving good cause to seal records to the moving party); *Stern v. Stern*, 66 N.J. 340, 343 n.1 (1975) (recognizing "that the use of initials in order to disguise the true identity of litigants serves a legitimate end where the interests of minor children are concerned"); *In re E.F.G.*, 398 N.J. Super. 539, 545 (App. Div. 2008) (permitting relaxation of the publication requirement under R. 1:1-2 based on a balancing of interests). There is no principled reason the same protections should not be presumptively extended to everyone.

L. decided to put their transgender child's name change on hold because their family could not afford to hire an attorney:

"When my son socially transitioned, my husband and I began to look into changing his name legally. I asked around and was told that the only way to make certain that a name change is private is to go through a lawyer. Otherwise, we would have to appear in court and publish notification in a local paper. Mindful of the need to protect our child's privacy, my husband and I determined that we would have to use a lawyer for the name change process.

During an initial phone consultation with a well know LGBTQ lawyer, I was told that the entire name change process would cost in the \$3,000 range. Unfortunately, my family is on a strict budget and this amount of money would have meant taking out a loan or forgoing extracurricular activities for both of my children. After much discussion, we determined that we would have to wait to legally change our son's name until a point in the future when we could more easily afford it.

It was heartbreaking to have to make that decision - one based purely on finances while I knew of other wealthier families who had hired lawyers to change their transgender children's names. Changing a transgender child's name should not ever be an issue of whether a family has enough money or not. Money in this case buys the privilege of protecting your transgender child's identity."

—L.

S. was able to hire an attorney, who helped the family keep their transgender child's name change private:

"My daughter changed her name at age five, before entering kindergarten. We hired a lawyer, as she was young. Fortunately the judge agreed to keep the name change confidential.

We are happy this is staying confidential, as the rate of harassment and violence is too great and we fear for her safety if this information was ever to be leaked. She lives her life as a happy, healthy, smart, talented little girl and the community sees her that way, whether they knew her before she socially transitioned or don't know that's she is a trans girl.

Like all parents, we want both our cisgender and transgender daughters to grow up healthy, happy, confident, caring and smart. We want them both treated equally in society and not to fear for their safety or lack of basic rights. We appreciate the New Jersey government for accepting our daughter and treating her with the safety and respect she deserves."

—S.

G. is in the beginning stages of the name change process for their transgender child. Although G. plans to hire an attorney, G. worries that the attorney's efforts could prolong the process and, given the discretion and unpredictability in current rules and norms, may still be inadequate to keep G.'s child safe:

"We considered filing the paperwork ourselves (one of us is even a lawyer!) but the prospect of doing it on our own was undesirable because we don't know the ins and outs of the court process to ensure our daughter's privacy. It is expensive to hire a lawyer who specializes in transgender name changes, but we know it is critical to have someone who is well-versed in requesting—and hopefully achieving—anonymity for our child throughout the process.

We are under a time constraint: our child has an expired passport, we travel outside the U.S. each year to see family, and we want her to have a passport that reflects her true gender. Our attorney will submit requests that her name change not be published, that only her initials are used in court documents, that the documents are sealed, and that she isn't required to appear in court. Each of these requests will take considerable time.

Even with the aid of an experienced lawyer, we are still concerned that these requests for anonymity won't be granted. If that is the case, we may have to renew our child's passport with the incorrect gender and subject her to a very painful situation if she is forced her to say her birth name at the border."

—G.

Every child should have equal access to the opportunity to safely, reliably, and privately bring their legal name into conformity with their identity.

3. PROVIDING AFFIRMATION AND SUPPORT

The final component of Recommendation 2019:13 would provide judges with sample colloquies to ensure that they use appropriate language in matters involving transgender, gender non-conforming, and non-binary children. Specifically, the sample colloquies would guide judges in creating a record that references a child's name assigned at birth without unnecessarily compelling the child to make a first-person identification with that name.

This proposal reflects the understanding that even the best legal rules are insufficient on their own to create an atmosphere of acceptance and affirmation in the courtroom.

S. was apprehensive about how the judge assigned to the case would approach their daughter's name change:

"I was very nervous that the judge would ask my daughter questions that were judgmental. We held off filing until we felt confident a supportive and accepting judge would be assigned to the case."

—S.

L. described the distress their child feels when forced to answer to his name assigned at birth:

"At two-and-a-half years old my child started saying 'I am not a girl, I am a boy!' For almost two years, my husband and I stood by as our child became increasingly angry, anxious and withdrawn. She would scream when getting dressed for school and would take scissors to cut her long hair off. My child was having frequent tantrums and was withdrawn at school.

At 4.5 years old, it became clear to my husband and me that our child was insistent, consistent and persistent that his gender identity was that of a boy. During the summer between preschool and kindergarten, we helped our child socially transition from female to male. We changed pronouns, bought a whole new wardrobe from the boy's department, cut his hair and saw a happy, confident, silly, proud young boy emerge.

Our transgender son began kindergarten as a happy boy who was affirmed in his gender by the school district as well as his teachers. Our son has been living happily presenting as a boy for the past 4 years and has full acceptance within our family as well as the community.

However, his legal name still reflects his very feminine birth name and is a source of anxiety for him. Whenever we go to visit a doctor, his legal birth

name is called out in the waiting room for all to hear. This causes him to feel anxious and upset, not to mention the fact that he is aware of the confusion on the faces of the other patients in the waiting room."

—L.

The proposed colloquy resource will redound to the comfort and confidence of judges and children alike. There is no cost in encouraging courts to adopt sensitive and supportive language in name change cases, but the benefits are profound.

CONCLUSION

Courts should help make children safer, not more vulnerable. In G.'s words, "Confirming one's gender when it doesn't align with what was assigned at birth takes great fortitude. Supporting a family member who is confirming their gender also takes strength. It's painful for everyone when institutional procedures require mis-gendering and publicly enforce mis-naming." Recommendation 2019:13 aims to avert a piece of that pain and deliver more justice to families across the state. The ACLU-NJ and North Jersey Pride/RAD Family urge the New Jersey Judiciary to adopt the Recommendation in full.

Respectfully Submitted,



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American Civil Liberties Union of New Jersey



CJ Prince
North Jersey Pride