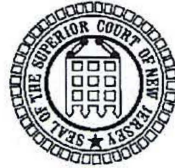


#012

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

HANY A. MAWLA
JUDGE



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WESTMONT, NEW JERSEY 08108
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October 14, 2020

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attention: Comments on Proposed Amendments to Rule 4:72 – Removal of Publication Requirement
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037
Via email Comments.Mailbox@njcourts.gov

Re: Proposed Amendments to Rule 4:72 – Removal of Publication Requirement (Name Changes)

Dear Judge Grant:

The Supreme Court Committee on Diversity, Inclusion, and Community Engagement (“SCC-DI&CE”), in its advisory role to the Court, writes in full support of the proposed changes to Rule 4:72, which proposes to eliminate the newspaper publication requirement in name change matters.

As referenced in the related Notice to the Bar, the proposal, which was submitted on the joint recommendation of the Supreme Court Family Practice and Civil Practice Committees, builds on Recommendation 2019:13 by the Supreme Court Committee on Diversity, Inclusion, and Community Engagement. Specifically, the proposal will implement the elimination of the newspaper publication requirement for children and youth as recommended by this Committee in its 2017-2019 report and also for adults.

The basis for our support of the elimination of the publication requirement in uncontested name change matters for children and youth is fully set forth in our 2017-2019¹. Contextually the Committee’s discussion regarding the elimination of the publication requirement for minors centered on the issues of the privacy interests of the children and their families and also to protect the psychological well-being and physical safety of the children by not creating a public record of their name change proceeding.² Building on the reasoning set forth in our 2017-2019 report, we

¹ See <https://njcourts.gov/courts/assets/supreme/reports/2019/minorityrpt.pdf> (pp. 24-33).

² See the substantive public comments submitted and related testimony of witnesses at the public hearing regarding Recommendation 2019:13 detailing specific points regarding children’s privacy, well-being, and safety at <https://njcourts.gov/courts/supreme/reports.html> (letters #12, #15, and #17 on the bottom of page 2 “Comments Received”).

present here the key factors underlying our support for the complete elimination of the publication requirement including adult name changes.

- New Jersey is a common law name change state. While people may lawfully use names different than what appears on their government-issued identification documents, court-approved name changes provide individuals the ability to obtain government-issued identification documents and administrative records that reflect who they are. Accurate and conforming government-issued identification documents serve as a gateway to a range of quality-of-life basics including housing, employment, education, healthcare, interstate travel, and recreational activities.
- Facilitating access is a valuable means of improving access to the courts. The SCC-DI&CE views this proposal as remedying a significant procedural inconsistency and advancing procedural fairness for parties in name change matters, for self-represented and represented litigants without the additional hurdle of convincing a court to waive publication. This proposal further resolves the inconsistency in publication requirements based on the context in which a name is changed through the courts.
- A newspaper publication requirement is an added financial obstacle to a court process that as a procedural matter already includes filing fees and attorney fees.
- For self-represented litigants, the publication requirement is problematic because they are unfamiliar with Court Rules that allow them to request publication waivers. Therefore, eliminating the publication requirement would simplify/streamline the name change process and make it more feasible for individuals who cannot afford private counsel to proceed with their name changes.
- The Court Rule provides for notice where there are interested parties. Further, publication is not required to protect against avoidance of creditors nor evasion of prosecution: Individuals who change their name still maintain the same social security number and thus can be located by creditors, and also maintain the same fingerprints and DNA and can be identified by law enforcement.
- Eliminating the publication requirement in adult name changes resolves a series of access to the courts issues.

The current requirement for newspaper publication in Rule 4:72 creates the following obstacles for adult transgender, non-binary, and gender non-conforming people seeking names changes in affirmation of their gender identity:

- A publication requirement is a recognized barrier to name changes for transgender, non-binary, and gender non-conforming adults in particular due to privacy and safety concerns.
- While common law name change states like New Jersey do not require court-ordered or court-affirmed name changes to lawfully use a name, transgender, non-binary, and gender non-conforming people who do not have access to name change court process are prevented from obtaining government-issued identification that includes their name and matches their gender identity.

- As a result of the inability to secure government-issued identification that reflect the name that more recognizably aligns with their gender identity and gender expression, transgender, non-binary, and gender non-conforming people often find themselves experiencing increased barriers to housing, employment, education, social services, and access to facilities that require proof of age.
- Violence against transgender people is well-documented as is the discrimination that transgender, non-binary, and gender non-conforming people experience – both individually and communally – in many aspects of life. The threats to the safety and well-being of transgender, non-binary, and gender non-conforming people are such that the Court of Appeals in Indiana ruled in a gender marker change case that the threat to safety at the group level eliminated the requirement to substantiate threat to a person individually and thereby warranted sealing the record and waiver of publication.³

As stated in the Notice to the Bar, “elimination of the publication requirement would support consistency for all court users and provide for the safety and privacy interests of those obtaining name changes in affirmation of their gender identity.” The SCC-DI&CE joins in the recommendation jointly presented by the Civil and Family Practice Committees recommending the eliminating the publication requirements set forth in Rule 4:72-3 (“Notice of Application”) and 4:72-4 (“Hearing; Judgment; Publication; Filing”).

We thank the Court for the opportunity to provide commentary on pending proposals that seek to expand access to the courts and advance procedural fairness.

Respectfully submitted,



Hany A. Mawla, J.A.D.

Chair, Supreme Court Committee on Diversity, Inclusion, and Community Engagement

cc: Steven D. Bonville, Chief of Staff
Yolande P. Marlow, Ph.D., Diversity, Inclusion, and Community Engagement Program
Director
Lisa R. Burke, Diversity, Inclusion, and Community Engagement Program Coordinator

³ In re the Name Change of A.L. and In re the Name Change of L.S., Court of Appeals of Indiana, Opinion 79A02-1703-MI-473, August 10, 2017, <https://www.in.gov/judiciary/opinions/pdf/08101702jb.pdf>.