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March 25, 2021

Via Email - Comments.Mailbox@njcourts.gov

Honorable Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Administrative Office of the Courts
Attention: Comments on the Supreme Court Committee
on Diversity, Inclusion and Community Engagement
Recommendations 2021:11 and 2021:12
Hughes Justice Complex
25 W. Market St.
P.O. Box 037
Trenton, NJ 08625-0037

**Re: Comments on the Supreme Court Committee on Diversity, Inclusion and
Community Engagement Recommendation 2021:11 and Recommendation 2021 –
Amendments to R. 1:38 and R. 4:72**

Dear Judge Grant:

Please accept this letter as my comments in support of the proposed change to Rules 1:38 and 4:72, calling for making all name change applications confidential, and removing the thirty (30) day waiting period for a name change judgment to become effective, as set forth in Recommendations 2021:11 and 2021:12 of the Report of the Supreme Court Committee on Diversity, Inclusion and Community Engagement (the "Committee"). As I have pointed out in the past, although I am a member of the Committee, I am not writing in that capacity, nor am I offering these comments in any of my various roles within the New Jersey State Bar Association. Instead, I write in my professional capacity as an attorney who handles name change applications, primarily on behalf of transgender individuals, and in my personal capacity as a transgender woman.

In this regard, I primarily want to amplify from my own personal and professional experiences the reasons set forth in the Committee Report for making all name change applications confidential pursuant to Rule 1:38-11—"concerns for the safety and well-being of name change



applicants who seek the court-affirmed name change in affirmation of their gender identity” and to avoid disparate impacts for self represented individuals.

Beginning in approximately 2013, when, at the time, all name changes were still heard in the Law Division, I started filing all name change applications for transgender minors with a motion to allow me to file the Complaint using only initials, to waive the then required publication requirements, and to allow all documents with the parent/guardians’ name and the child’s name to be filed under seal. I am not certain if I was the first attorney to file such a motion, but I do know that I was not aware of anyone else who had done it. As a result, I literally made it up as I went along. Fortunately, for the first clients I did it for, two supporting and wonderful parents to a then ten (10) year old daughter, we had a very understanding and accommodating judge who granted the motion and we proceeded to change their daughter’s name with a sealed record. Today, unless she chooses to “out” herself as transgender, there is no public record disclosing the fact of this young woman’s name change. To me, and more importantly to her parents, it was critically important to provide her with that anonymity, because there simply was no public interest in the world knowing she was transgender, and there remains no reason to disclose it unless and until she decides she wants to.

Following that experience, I reach out to my colleagues who were also doing name changes on behalf of transgender and non-binary clients and shared my work product (redacted of course). As a result, I would like to think that, in some small way, I had a hand in the now fairly common practice among attorneys of filing these motions on behalf of transgender children. At least anecdotally, it is my understanding that most Judges have granted these motions when the name change involves a child.

Again anecdotally, for adults, the effort to have Judges grant these motions appears to be mixed at best. In the adult arena, to the best of my knowledge, there is only one case that deals with the circumstances of when an adult name change should be sealed, In the Matter of E.F.G., 398 N.J. Super. 539 (App. Div. 2008). There the Court held that the judge must identify and balance the interests that are at stake in allowing a record to be sealed and that generally “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, are insufficient.” Id. at 548. In that matter, the plaintiff, a victim of domestic violence, sought to maintain the privacy of her new name out of a well-founded concern for her personal safety as a result of prior domestic abuse. Id. at 545-547. As a result of the language of In the Matter of E.F.G., some judges, in ruling on applications made by transgender adult name change applicants to seal the records, are denying the application unless an applicant can point to a “well-founded concern for [their] personal safety” In other words, a particularized threat, as opposed to the more generalized threat that all transgender and non-binary individuals face (see, Committee Report at 56-57). Unfortunately, most particularized threats do not occur until after a transgender or non-binary person comes out, and so the very nature of the name change process is exposing them to the particularized threats to their personal safety that might not have occurred prior to them coming out. Accordingly, an applicant does know what particularized threat will come their way until after they change their name. Thus,



the burden being placed on applicants is impossible to meet, until the Court denies the sealing request, in which case it is obviously too late.

In 2019, I had the privilege to be selected by Governor Murphy and the State Legislature to be one of seventeen (17) members of the New Jersey Transgender Equality Task Force. As part of the Task Force's work, it held a series of community meetings. In the Task Force's Final Report and Recommendations it noted that "[a]t every Community Meeting held by the Task Force, transgender, non-binary and gender nonconforming individuals expressed frustration at the cumbersome, expensive and burdensome procedures that a person must go through to legally change their name." See Transgender Equality Task Force Report and Recommendations at pg. 35 (for the Court's convenience pgs. 35-37 of the Report dealing with Name Changes are attached hereto as Exhibit A). With regard to name changes the Task Force found:

It should also be noted that both name changes for minors, which are heard in the Family Part, and name changes for adults, which are heard in the Civil Part, are public proceedings and there are no uniform provisions in place to either allow for the filing of the necessary pleadings using initials or to allow for the sealing of the court record. Absent these procedures, there will always be a public record which effectively outs an individual as transgender. Except in very limited situations (pending criminal charges, prior criminal records, pending civil lawsuits or civil judgments) there is no public benefit served by publicizing the name changes of transgender adults. Even in those cases, notifying the prosecutor's office, Attorney General or creditors, can resolve those issues without the need for publication. In the case of transgender minors, there is no public interest whatsoever in publishing a name change. Id. at 37.

As someone who has been through the name change process, I am extremely fortunate and recognize that I enjoy certain privileges that many transgender and non-binary people do not enjoy. I am a practicing attorney with the ability to navigate the legal system; the costs associated with the proceeding, were not burdensome to me; and, after I came out, I was open concerning my status as a transgender person. But even for me, there were family members who were concerned for my personal safety when they learned that information about my name change would be a public record. As one said to me, "Will you be okay? There's a lot of people out there that don't like people like you." For me, as for many transgender people, it was a risk I was required to take. Allowing the records of all name changes to be confidential would remove that concern for a community that is already at risk for a multitude of reasons.

Finally, but of critical importance, is the disparity that exists for self represented litigants. As I noted earlier, I made up my sealing motion as I went along and then shared it with colleagues who have continued to refine and improve it. But a self represented litigant, be that an adult or the parents/guardians of a child, would have no way of even knowing that such a motion was even possible. I respectfully suggest to the Court that in terms of access to justice, these disparate



outcomes cannot continue. Whether a person is changing their name for religious reasons, because they do not like the name they were given at birth, because they are transgender or non-binary, or the myriad of other reasons a person may legitimately have for changing their name, there is simple no public interest in the process that outweighs the privacy of the applicant. When we were born, each of us were given a name by our parents or guardians and the rest of the world did not get to weigh in on their choice. So too, if the parents/guardians of a child chooses to change the name of their child, or if an adult chooses to change their name, there is no countervailing public interest in the name they select.

For all of these reasons, as well as those set forth in the Committee's recommendation, I strongly support the change to allow all name change applications, adult and minor, to be confidential in accordance with Rule 1:38-11. Similarly, as the Court has previously removed the publication requirement of R. 4:72-4, there no longer exists any practical reason to delay the effectiveness of the name change judgment for thirty (30) days as currently required by R. 4:72-4, and the judgment should become effective immediately upon entry by the Court.

Thank you for considering my comments.

Respectfully submitted,

By: /s/ Robyn B. Gigl
Robyn B. Gigl

EXHIBIT A

**New Jersey Transgender Equality Task Force
Report and Recommendations**

**Addressing Discrimination
Against Transgender
New Jerseyans**

November 20, 2019



reflect their identities and lived experiences. The Task Force commends the MVC for taking this step, as transgender, non-binary, and intersex New Jerseyans need access to identity documents that accurately reflect the gender they live every day, which is not necessarily the gender they were assigned at birth. We all use identity documents for important tasks such as enrolling ourselves or our children in school and college, applying for a job, opening a bank account, and applying for an apartment or mortgage. At other times we are compelled to show our identity documents, such as at a routine traffic stop or boarding an airplane. Having documentation that matches one's gender is vitally important, as mismatches between a person's gender identity and their identity documents can and does result in discrimination and harassment. The 2015 U.S. Transgender Survey showed that almost one third (32%) of transgender people who have shown ID's that do not match their gender presentation had negative experiences, including verbal harassment (25%), denial of services or benefits (16%), being asked to leave (9%), and being assaulted or attacked (2%).

In order to modernize the process for changing gender marker on a driver's license and eliminate barriers to self-identification and accurate identity documents currently faced by transgender and non-binary New Jerseyans, as indeed we understand is currently being undertaken, the MVC should:

- Allow applicants to sign an affidavit affirming their identity, rather than requiring a letter from a therapist or other medical professional. Requiring letters from medical professionals presents a significant barrier to obtaining accurate identification, particularly for people who may not have insurance or cannot afford medical fees and people who may not have access to supportive providers. Transitioning is a very individualized process, and individuals themselves know best what gender marker is appropriate and safest for them in interactions where they must show official identification.
- Provide a third gender option on New Jersey drivers' licenses. Like everyone else, people whose gender identity is neither male nor female need access to documentation that matches their presentation and affirms that their experiences and lives are valid and recognized.

Making these changes will also bring the process for changing gender marker on a New Jersey driver's license into line with the process for changing gender marker on a New Jersey birth certificate.

Legal Name Changes

At every Community Meeting held by the Task Force, transgender, non-binary and gender nonconforming individuals expressed frustration at the cumbersome, expensive and burdensome procedures that a person must go through to legally change their name. In connection with the current procedures in place to legally change one's name in New Jersey, the Task Force recognizes that there is a major limitation on what it can recommend. This limitation is the result of a separation of powers issue caused by the fact that many of the current procedural requirements for a name change are not statutory in nature but required by the New Jersey Rules of Court issued by the New Jersey Supreme Court. Pursuant to Winberry v.

Salisbury, 5 N.J. 240 (1950), these Rules cannot be changed by legislative action. Nonetheless, the Task Force believes it is important to identify the issues encountered by community members when seeking a legal name change so that a dialogue can be opened with the Administrative Office of the Courts to try and address these concerns.

"I had to put name in the paper up here. It went viral. People sent me hate mail."

- Community Conversations Participant

Name changes in New Jersey are governed by N.J.S.A 2A 52-1. Statutorily all that is required is the filing of a Complaint for Name Change and "a sworn affidavit stating the applicant's name, date of birth, social security number, whether or not the applicant has ever been convicted of a crime, and whether any criminal charges are pending against him and, if such convictions or pending charges exist, shall provide such details in connection therewith sufficient to readily identify the matter referred to. The affidavit shall also recite that the action for a change of name is not being instituted for purposes of avoiding or obstructing criminal prosecution or for avoiding creditors or perpetrating a criminal or civil fraud. If criminal charges are pending, the applicant shall serve a copy of the complaint and affidavit upon any State or county prosecuting authority responsible for the prosecution of any pending charges."

"If it is a transition name change there should be an option that publication is waived. My old name and current name are in google and you will get that name change."

- Community Conversations Participant

However, in implementing those statutory requirements the Court Rules, in addition to the Complaint and affidavit (R. 4:72-1), require a petitioner to submit a proposed court order setting a date for a court hearing (R. 4:72-3); have that proposed order published in a newspaper in the county where the Complaint is filed (R. 4:72-3); attend a hearing in person (R. 4:72-4); and then have the final judgment published in the same newspaper in the county (R. 4:72-4). While the Administrative Office of the Courts

has available on the Judiciary website the forms necessary for a self-represented litigant to use, many individuals who spoke at the Community Meeting stated that the forms were hard to follow; the costs of filing a Complaint (\$250) and then having the order and final judgment published (which can range from \$50 each time to over \$100 each, depending on the newspaper) made the procedure cost prohibitive; physically appearing in court and having their case name called (i.e. In the Matter of John Doe to assume the name Jane Doe) outed them and was embarrassing; and the fact that there appeared to be no uniformity in how judges handled name changes, had lead many community members to simply not legally change their names. This in turn causes many trans individuals to have to continual out themselves when looking for employment, seeking health care or trying to find housing because their appearance and documents do not match. This in turn can, and often does, lead to discrimination.

“The judge put my attorney through the ringer on my name change. I’m so glad I was fortunate to have an attorney because I couldn’t have done that myself.”

- Community Conversations Participant

It should also be noted that both name changes for minors, which are heard in the Family Part, and name changes for adults, which are heard in the Civil Part, are public proceedings and there are no uniform provisions in place to either allow for the filing of the necessary pleadings using initials or to allow for the sealing of the court record. Absent these procedures, there will always be a public record which effectively outs an individual as transgender. Except in very limited situations (pending criminal charges, prior criminal records, pending civil lawsuits or civil judgments) there is no public benefit served by publicizing the name changes of transgender adults. Even in those cases, notifying the prosecutor’s office, Attorney General or creditors, can resolve those issues without the need for publication. In the case of transgender minors, there is no public interest whatsoever in publishing a name change.

It is our hope that these issues can be addressed through communications between the legislative, executive and judicial branches to ease the procedural and financial burdens currently imposed on individuals seeking legal name changes.

Clarify That the Law Against Discrimination Applies to Health Programs and Activities

The Legislature should pass legislation which would clarify that the New Jersey Law Against Discrimination explicitly applies to health programs and activities and which would explicitly prohibit