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BY OVERNIGHT MAIL AND EMAIL

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Rules Comments
Hughes Justice Complex, P.O. Box 037
Trenton, New Jersey 08625-0037

Re: *Comments to the 2019-2021 Report and Recommendations of the Supreme Court Committee on Diversity, Inclusion & Community Engagement*

Dear Judge Grant,

The New Jersey Office of the Public Defender, Office of the Law Guardian (OLG) represents children in litigation brought under Titles Nine and Thirty by the New Jersey Division of Child Protection and Permanency (DCPP). These cases are commonly referred to as the Children-in-Court (CIC) dockets. The OLG commends the Committee on Diversity, Inclusion, and Community Engagement (Committee) on its initiatives to increase access and equitable procedures for New Jersey litigants, specifically transgender, gender non-conforming and non-binary people, and fully supports the Committee's recommendations 2021:11 and 2021:12 related to name change applications and records.

As a further initiative to ensure access to the remedy of a name change in appropriate circumstances, the OLG suggests the Committee consider modifying Rule 4:72-1(b) for foster children to whom DCPP is the custodian or guardian to allow the child or the child's counsel to file a name change complaint. Additionally, the OLG proposes the Committee expand Rule 1:38-3(d) to exclude from public access name change records for young adults receiving case management, financial or other services from DCPP. These changes, in conjunction with the Committee's recommendations related to name change applications and records, will ensure that similarly situated name change applicants will be treated the same.



**I. Rule 4:72-1(b) Should Be Amended To Permit
A Foster Child To Independently File A Name Change Application**

The OLG urges the Court to consider amending Rule 4:72-1(b) to permit a child in the custody or guardianship of DCPD to file a name change application independently. Children in a variety of circumstances, including but not limited to transgender, gender non-conforming and non-binary children, youth survivors of sexual, emotional and/or physical abuse, and children who have experienced a failed adoption, may seek to change their name. Young survivors of abuse often share the name/surname of their abuser, and to hear or see their own name may trigger devastating trauma. A child victim's proactive filing of a name change application may be part of the healing process. Without modification, the current rule potentially prevents a foster child from accessing a remedy available to non-foster children whose interests are aligned with those of their parents or guardians.

Currently, Rule 4:72-1(b) provides that only a parent or guardian may file a name change complaint. In the OLG's experience, however, court practices are inconsistent throughout the state, as some courts permit the child's counsel to file the name change application, while other courts require DCPD or a parent or guardian to file the application. Modifying the rule to allow the child and/or child's counsel standing to file the application would ensure that all similarly situated litigants, in this instance foster children, are treated the same statewide.

Allowing a child to file a name change complaint is also equitable, because doing so would provide recourse to a foster child whose parent, guardian, or DCPD representative indiscriminately objects to the requested name change. In CIC cases, the child may request that the court order DCPD or the parent to file a name change application. A conflict of interest, however, or a lack of DCPD resources may impede follow through and untenably delay the name change process. Name change applications for children are not within the DCPD's standard practice nor within its statutory purpose, which may impact the efficient filing of the application for the child. Additionally, DCPD's obligation is to serve all members of the family, which may result in a conflict of interest in consideration of a foster child's request for a name change.

To facilitate equity, the OLG proposes that Rule 4:72-1(b) be amended to permit foster children to file a name change application with notice to DCPD and the child's parents or guardians. In CIC litigation, as the OLG is appointed to represent each child, the child's counsel is uniquely suited to file and argue name change applications as requested by the child. The child's assigned counsel ethically represents the child's position. The proposed change would not be prejudicial to the child's parents, guardians, or to DCPD as all applications would be on notice to them and they would have an opportunity to oppose the application. Ultimately, the court, using the best interest of the child standard, would determine whether a name change is warranted.¹

¹ See N.J. Div. of Youth & Family Servs. v. J.L., 264 N.J. 304, 309-311 (Ch. Div. 1993) (ordering a name change that the court determined to be in the child's best interests).



II. Rule 1:38-3 Should Be Amended To Provide That Name Change Court Records For Minors And Young Adults With A Current Connection To DCPD Be Sealed

The OLG agrees with the Committee that well-documented, generalized threats to the safety and well-being of transgender, gender non-conforming and non-binary people warrants the automatic sealing of name change court records pursuant to Rule 1:38-3. After consideration of the Committee's recommendation, the Family Practice Committee recommends the automatic sealing of name change court records related to minors. As observed by the Family Practice Committee, only parents and children, not the general public, have an interest in name change applications for minors. The OLG supports the Family Practice Committee's recommendation to amend Rule 1:38-3 to seal name change court records for minors.

The OLG respectfully requests that both committees consider including Young Adults receiving case management, financial, or other services from DCPD in this category, in addition to minors. Analogous to the sealing of minors' records, young adults receiving case management, financial, or other services from DCPD who seek a name change should benefit from the automatic sealing of court documents, as DCPD documents and information are confidential pursuant to N.J.S.A. 9:6-8.10a. This population shares the same compelling interests as the minors referenced above, but may also face additional economic concerns. For example, it is well documented that foster children are more often subject to identity theft than children in the general population, and the identity theft is not usually discovered until the children become adults.² After resolving issues related to the theft of their identities, young adults aging-out of foster care may seek a name change and a sealing of the record to prevent the continued misappropriation of their new identifying information. Accordingly, the OLG asks this Committee and the Family Practice Committee to consider adding "Young Adults receiving case management, financial, or other services from DCPD" to the language for the proposed change to Rule 1:38-3 to protect the interests of this discrete and vulnerable population.

² "The Fleecing of Foster Children: How We Confiscate Their Assets And Undermine Their Financial Security," Joint Report by The Children's Advocacy Institute and First Star, issued March 16, 2011 (*available at* [Fleecing_Report_Final_HR.pdf](#) (caichildlaw.org)).



The OLG appreciates the opportunity to provide comments to the Court and stands ready to assist if further review is needed. We applaud the Court's efforts to protect our state's most vulnerable citizens and request that our concerns and commentary are taken into consideration as the Court proceeds further.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Traci Telemaque".

Traci Telemaque
Assistant Public Defender