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SUBMITTED VIA E-MAIL TO COMMENTS.MAILBOX@NJCOURTS.GOV

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

Dear Judge Grant:

Lowenstein Sandler LLP ("Lowenstein"), the Transgender Legal Defense & Education Fund ("TLDEF"), and Garden State Equality ("GSE") respectfully submit the below comments concerning legal name changes in response to the February 9, 2021 Notice to the Bar soliciting input on the 2019–2021 reports of several of the Supreme Court's rules and program committees.

Specifically, we write to support the following: (1) the proposed exclusion of name change matters from public access under Rule 1:38, as set forth in Recommendation 2021:11 of the Committee on Diversity, Inclusion, and Community Engagement ("CDI&CE") report ("Recommendation 2021:11") and Section II.A.1 of the Family Practice Committee ("FPC") report pertaining to minor name changes ("Section II.A.1"); and (2) the proposal for name changes to be effective immediately upon issuance of the Judgment for Name Change, as set forth in Recommendation 2021:12 of the CDI&CE report ("Recommendation 2021:12").

We also provide observations and recommendations regarding transparency and access to justice based on our extensive, cumulative experience representing low-income transgender, gender-nonconforming, and non-binary name change applicants in New Jersey and other states.

TLDEF is a 501(c)(3) nonprofit committed to ending discrimination and achieving equality for transgender Americans, particularly those in our most vulnerable communities. Through its Name Change Project, TLDEF partners with pro bono volunteers to assist low-income transgender, gender-nonconforming, and non-binary people in adopting legal names that conform to their identity. Having a name that aligns with one's gender presentation and identity reduces the potential for violence and discrimination,[1] and it

[1] Nearly one-third (32%) of individuals who have shown I.D. with a name or gender that did not match their appearance have had negative experiences such as being harassed, denied services, or attacked. See Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey 89 (2016), http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf.

allows the clients and community we serve to live more complete and open lives. The project operates in eight states and is a certified pro bono provider in New Jersey under Rule 1:21-11(b). Lowenstein is proud to have joined with TLDEF in 2015 to launch the Name Change Project in New Jersey, through which we have represented dozens of name change applicants across the State.

GSE is New Jersey's statewide advocacy and education organization for the lesbian, gay, bisexual, and transgender community. Established in 2004, GSE is the largest LGBTQ advocacy organization in New Jersey. GSE's services include advocacy, policy work, and training. Having been a key force behind the Babs Siperstein Birth Certificate Law,[2] Garden State Equality and its members are strongly in support of this proposal.

We thank the Court for the opportunity to comment on recommended Rule changes that would affect the lives of our clients and countless others. We are immensely grateful for the Court's continued engagement with stakeholders involved in the legal name change process in furtherance of the goal of a fair and effective system of justice.

1. **Recommendation 2021:11**

We support the proposal in Recommendation 2021:11 to exclude all Civil Part and Family Part name change matters from public access under Rule 1:38 and agree with the reasons behind the proposal. It would do much to protect the privacy and safety of transgender, gender-nonconforming, and non-binary people, who face a recognized, unique risk from public access to name change records. Recommendation 2021:11 would also further equalize the administration of justice by removing barriers posed by little-known and rigid rules governing motions to seal name change proceedings. Finally, the proposal would be efficient and appears to require virtually no change in how applicants file name change petitions.

First and foremost, Recommendation 2021:11 would address the unique privacy and safety concerns of transgender, gender-nonconforming, and non-binary people. As the CDI&CE report explains, this community faces significant, generalized risk based solely on their gender identity. Transgender people, for instance, disproportionately experience violence both generally and from intimate partners.[3] Indeed, "[n]early half (47%) of respondents [to the 2015 U.S. Transgender Survey] have been sexually assaulted at some point in their lifetime," and "more than half (54%) experienced some form of intimate partner violence."[4] Employment discrimination, although illegal, is also an unfortunate reality for many transgender people. Over a quarter of respondents to the 2015 U.S. Transgender Survey were fired, denied a promotion, not hired, and/or experienced mistreatment in the workplace due to their gender identity; over three-quarters of

[2] N.J.S.A. 26:8-40.12.

[3] See generally, National Center for Transgender Equality, U.S. Transgender Survey (2015), Chapter 15: Harassment and Violence, https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf.

[4] Id. at 198.

respondents tried to avoid mistreatment in the workplace by hiding, delaying their gender transition, or even quitting.[5]

Public accessibility of name change records can fuel these risks by divulging transgender, gender-nonconforming, and non-binary applicants' gender identity and giving bad actors a means to jeopardize their safety. For example, the Court's widely used form Verified Complaint for *pro se* applicants[6] asks for a home address, full old and new names and aliases, and a reason for the name change. The form Order for Hearing and Judgment for Name Change similarly have spaces for full old and new names. Even the online docket itself usually lists an applicant's new and old names and address under "Case Caption" and the "Plaintiffs" and "Defendants" tabs. This information, when posted to eCourts, often reveals a transgender, gender-nonconforming, or non-binary applicant's gender identity, along with their location, to anyone with Internet access—including employers and anyone who may wish to harm the applicant. Excluding name change matters from public access under Rule 1:38 would eliminate this needless risk.

Automatic exclusion from public access is also a fairer alternative to filing often-complex motions to seal in individual cases under Rule 1:38-11, as currently required. Our experience aligns with the CDI&CE report's observation that many name change applicants do not know that sealing is an option. Indeed, we understand that most name change applicants are self-represented, often due to financial circumstances, and rely exclusively on the Court's *pro se* packet to navigate the name change process. Yet the *pro se* packet does not mention the right to file a motion to seal, let alone include sample motion papers. Recommendation 2021:11 would eradicate an important obstacle to access to justice caused by inconsistent awareness of and/or ability, financial or otherwise, to navigate sealing procedures.

Even represented applicants who know that they can file motions to seal face a stringent and often deterring sealing standard. The "good cause" standard under Rule 1:38-11 generally applies to sealing any type of court record. But how courts apply this standard in name changes may not adequately protect the privacy and safety of transgender, gender-nonconforming, and non-binary people. The only published decision applying the "good cause" standard to a name change, In re E.F.G., 398 N.J. Super 539 (App. Div. 2008), is often read to require proof of a particularized threat. However, the applicant in In re E.F.G. faced a specific threat from her domestic abuser based on a documented history of abuse and continued contact from the abuser.

In stark contrast, the entire transgender, gender-nonconforming, and non-binary community faces a general but real risk of harm simply from revealing their gender identity,[7] even though they may not be able to point to documented threats or likely

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[5] Id. at 148.

[6] The forms packet, entitled "How to Ask the Court to Change Your Name - Adults Only," can be found here: https://www.njcourts.gov/forms/10551_namechg_adult.pdf.

[7] The United States Court of Appeals for the Third Circuit has acknowledged that "[t]here can be 'no denying that transgender individuals face discrimination, harassment, and violence because of their gender

assailants at the time of filing the name change petition. Justice is not served by preventing members of this community from sealing name change proceedings, or incentivizing them to delay filing name change petitions, until they personally experience the harm attendant with the risk that they live with every day. Additionally, courts have decided motions to seal name changes inconsistently under the vague "good cause" standard and the lone, factually distinct In re E.F.G. decision, making administration of justice as to sealing name change proceedings unpredictable. Excluding name change matters from public access under Rule 1:38, as Recommendation 2021:11 proposes, would result in consistent treatment of the privacy and safety interests of all name change applicants and eliminate the barriers and disparate outcomes arising from the current sealing process.

Recommendation 2021:11 also furthers the interest of justice with its simplicity and minimal impact on applicants. Automatic exclusion from public access under Rule 1:38 would leave little room for interpretation and be understood by applicants, lawyers, court staff, and the public alike. We also understand that Recommendation 2021:11 would not impose any additional burdens on applicants or change the process for seeking a legal name change (aside from removing the barrier posed by motions to seal, as explained above). We further support Recommendation 2021:11 on these grounds.

2. Section II.A.1 of the FPC Report

We likewise support the recommendation in Section II.A.1 of the FPC report to exclude records of minor name changes from public access under Rule 1:38-3 for the same reasons we support Recommendation 2021:11 discussed above. Further, there is considerable statutory precedent for excluding from public access other records relating to minors, such as in juvenile criminal matters, see R. 1:38-3(d)(5)–(8), (19); custody, parentage, and adoption matters, see R. 1:38-3(d)(3), (13)–(14), (16); and sexual-assault cases, see R. 1:38-3(d)(11), among others. We also agree with the FPC report that the privacy and safety interests of children and their parents outweigh the public's interest in minor name changes. We therefore support Section II.A.1's proposal to exclude minor name change records from public access.

3. Transparency and Related Observations and Recommendations

As discussed above, we believe Recommendation 2021:11 and Section II.A.1 increase access to justice for all name change applicants by eliminating inconsistencies that often result from having to file motions to seal in individual cases. Today, the ability to request information about name change proceedings can help identify such inconsistencies or other trends in the administration of these matters that bear on access to justice. Indeed, advocates and educators rely upon publicly available information to understand what occurs in name change and other judicial proceedings on a statewide level and to advocate for meaningful reforms.

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identity.'" Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 528 (3d Cir. 2018) (quoting Whitaker v. Kenosha Unified Sch. Dist. No. 1 Bd. of Educ., 858 F.3d 1034, 1051 (7th Cir. 2017)).

However, motions to seal are not the only sources of potential procedural inconsistency across name change proceedings. Judges may be inconsistent in, for example: (1) ordering certain name change applicants to notice parties beyond those required by the name change statute and Rule;[8] (2) requiring certain applicants to appear for the hearing and/or testify at the hearing; and (3) granting or denying issuance of the Judgment for Name Change itself. Though we believe and hope that such instances are rare, excluding name change matters from public access makes it more difficult to identify and address them. With respect to the first and third issues, a solution is to require judges to set forth, in writing, the reasons for ordering service on additional parties or denying issuance of the name change judgment. This order or opinion should then be anonymized and made publicly available on the docket. Such a procedure would significantly increase access to justice by (1) enabling and empowering applicants, including those who are *pro se* and of limited means, to avail themselves of the appeals process when necessary; and (2) provide some information to the public about the administration of name change proceedings without compromising the privacy and safety of name change applicants.

Even if the Court is not inclined to consider the foregoing suggestion, the inclusion of name change matters in Rule 1:38-3 may not necessarily foreclose the public from all information regarding name changes proceedings. Under Rule 1:38-13, court and administrative records are available in the form in which the judiciary maintains or indexes them. Assuming the court continues to maintain or index information about the administration of name change proceedings for its own purposes, it could consider making aggregate, anonymized data about name change proceedings available to private individuals or entities upon appropriate request.

Another option is to make information about name change matters available to the public through official reports. For example, domestic violence records and reports under N.J.S.A. 2C:25-33 are excluded from public access under Rule 1:38-3(9). Nevertheless, the public can access important information about these matters, including how they proceed and are resolved, through, *inter alia*, reports by the Supreme Court Ad Hoc Committee on Domestic Violence and the New Jersey Advisory Council on Domestic Violence. Assuming the court maintains information related to name change

[8] The name change statute and Rule already require notice to several entities, including: (1) notice of all applicants' petitions and hearing dates to the Division of Criminal Justice, Records and Identification Section; (2) for applicants with pending criminal charges, notice of petitions to corresponding state or county prosecutors; (3) submission of all applicants' Judgments for Name Change to the Department of Treasury; and (4) for applicants with convictions or pending charges, submission of Judgments for Name Change to the State Bureau of Identification (in the Division of State Police). See N.J.S.A. 2A:52-1; R. 4:72-3. Additionally, the New Jersey Attorney General's Office is automatically added as a party to every name change proceeding upon the filing of the complaint. Requiring an applicant to notify additional entities and individuals could harm an applicant's well-being without serving any counterbalancing interest. For example, requiring an undocumented applicant to notice U.S. Citizenship and Immigration Services of their name change proceeding, notwithstanding that legal status is not required for a name change, could result in removal proceedings against the applicant. For transgender and non-binary applicants in particular, even requiring notice on additional parties such as parents could needlessly harm the applicant's well-being, such as when parents and applicants no longer have a relationship or when the relationship is marked by animus against the applicant based on their gender identity.

proceedings for its own purposes, it could consider making this information available to the public through similar advisory bodies.

These are only two examples of the mechanisms through which the Court could make information about the administration of name change proceedings available to the public based on information it already maintains, while protecting the privacy and well-being of name change applicants by excluding such proceedings from public access under Rule 1:38-3. We would appreciate the opportunity to discuss such potential solutions with the Court at its convenience.

Finally, the Court should consider implementing a presumption that no hearing is required unless the judge has cause to order otherwise. We recommend removing the word "hearing" from Rule 4:72-4 and replacing it with the below language that makes it more clear to judges and applicants that hearings are not required, whether virtual or in-person, and that name change applications may be granted on the papers where appropriate.

We propose that Rule 4:72-4 read (including the change proposed by Recommendation 2021:12, which we also support, as discussed below):

> "Except as otherwise provided in Rule 4:72-1(b) and (c) regarding consent to a name change for a minor, on the date fixed for ~~hearing~~ review, the court, if satisfied from the filed papers~~, with or without oral testimony,~~ that there is no reasonable objection to the assumption of another name by plaintiff, shall by its judgment authorize plaintiff to assume such other name ~~from and after the time fixed therein, which shall be not less than 30 days from the entry thereof~~ effective immediately. If the court is not satisfied from the filed papers that there is no reasonable objection to the assumption of another name by plaintiff, the court may set a hearing date to obtain oral testimony or require plaintiff to provide any necessary information by other means. ~~At the hearing~~ Upon commencement of the name change proceeding, plaintiff must present adequate proof of ~~his or~~

Judges presiding over name change matters of course have the discretion to determine what proofs are necessary in an individual case to satisfy the requirements of the governing statute and Rule, and to request live testimony from the applicant if it will help the judge adjudicate the petition. However, in our experience, judges assume hearings are mandatory, and the status quo is to require applicants to appear. Yet requiring a hearing for a person who needs a name change, whether they are transgender or not, is often unduly burdensome. Not all petitioners have the means to travel to court or take time off work to attend a hearing. Even remote appearances that have taken place while courts have been closed during the pandemic have created significant obstacles for our low-income clients, many of whom do not have access to the technology needed to appear.

Moreover, for transgender petitioners specifically, interfacing with the court can be an incredibly stressful and invasive experience. Although some cases may legitimately require a colloquy on the record, in our experience, the court asks questions that are either answered by the papers or unrelated to the name change. Petitioners often report feeling that a hearing was held simply to satisfy a judge's personal curiosity about transgender people and how they appear and act in-person, or so that the judge might compare the petitioner to their given name and chosen name before issuing the Judgment for Name Change. Such an assessment is obviously outside the scope of what should be considered when disposing of a name change application, but it is also human and it happens, to the detriment of petitioners. Such experiences reduce confidence in the court system and can be unnecessarily traumatic when a more equitable solution is available. If the above proposed changes to the text of Rule 4:72-4 are not acceptable to the Court, we at minimum request that a memorandum or some other resource be used to ensure that judges know they can grant name changes on the written submissions without requiring a hearing.

We raise these issues and potential solutions for the Court's consideration as secondary to our support for Recommendation 2021:11 and Section II.A.1. Excluding name change matters from public access under Rule 1:38 is, in our view, the most fair, practical, and effective way to protect the privacy and well-being of all name change applicants, including transgender, gender nonconforming, and non-binary individuals. For all of the foregoing reasons, we respectfully request that the Court adopt Recommendation 2021:11 and Section II.A.1 as proposed.

4. Recommendation 2021:12

Finally, we support Recommendation 2020:12, which would amend Rule 4:72-4 such that Judgments for Name Change become effective simultaneous with their entry. As the CDI&CE report notes, the recent removal of the newspaper-publication requirement for name changes leaves no reason for a delay between a judgment's entry and becoming effective. Removing this delay will allow all name change recipients to more quickly update critical identification documents to apply for jobs, school, and public benefits; register to vote; and avoid possible embarrassment or danger from presenting an identification document that is perceived not to match its holder. The interests of fair and speedy justice that animate the Court Rules and this recommendation require no less.

5. Conclusion

We support the above recommendations for name change proceedings, as they will further the critical goals of increasing access to justice and protecting the safety of those that are at risk from public access to name change records. Equally important in achieving these goals is transparent court administration. We believe that the above recommendations strike the right balance between safeguarding the privacy and well-being of name change applicants and ensuring that they are able to access the courts

and complete a name change in an equitable and just manner. We thank Your Honor and the Court for its consideration.

Respectfully submitted,

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