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October 14, 2020

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 Proposed Amendments to Rule 4:72
Hughes Justice Complex
25 W. Market St.
P.O. Box 037
Trenton, NJ 08625-0037

Re: Comments on Proposed Amendments to Rule 4:72 – Removal of Publication Requirement

Dear Judge Grant:

Please accept this letter as my comments in support of the proposed change to Rule 4:72 waiving the publication requirement for all name changes. Initially, I wish to make clear that although I am a member of the Supreme Court Committee on Diversity, Inclusion and Community Engagement, 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 am writing 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 addition to the reasons set forth in the Notice to the Bar for eliminating the publication requirement—all of which are very important—I would like to add several others that specifically impact the transgender and non-binary communities.

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). At the various meetings, community members raised issues concerning the cost of publishing both the Order setting the date for the hearing and then the Final Judgment of Name Change. The cost of each publication can range from approximately \$50 to over \$100 for each legal notice, depending on the newspaper involved. For many individuals, this, along with the filing fees and the added fees of filing the Final Judgment with the New Jersey Division of Taxation and the New Jersey Bureau of Vital Statistics, made the name change process cost prohibitive. In addition, several community members discussed being publically outed and being threatened as a result of the publication of their information in the newspaper. *Id.* at 36. I ask the Court to please consider these experiences in considering the rule change as they are reflective of a process that is unnecessarily impacting the access to the courts and the safety of some name change applicants.

As someone who has gone through the name change process, I can also speak from personal experience. In my case, I recognize that I had many privileges most transgender people do not have. I am a practicing attorney with the ability to navigate the legal system; the costs associated with the proceeding, including the publication requirements, were not burdensome to me; and, after I came out, I was open concerning my status as a transgender person. But even with all those advantages, I still faced push back from some people close to me when I explained that the notice of my name change would be published twice in the local newspaper. Clearly, most transgender individuals do not have all the benefits that I enjoyed, and many do not want people to know about their status. For them the publication requirement can be a personal nightmare.

Even for me, there were family members who were concerned for my personal safety when they learned that information about my name change would appear in the newspaper. 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. Changing the rule would remove that concern for a community that is already at risk for a multitude of reasons.

Additionally, the rule change will have a tremendous positive impact on the handling of name changes for minors. Parents often struggle with accepting their child when a child’s gender identity does not correspond to the child’s assigned sex at birth. I have witnessed first hand the intensely personal issues that are involved when parents decide to allow their child to live in accordance with their gender identity. Often parents face backlash from their family, friends and school personnel regarding their decision to allow their child to live as their true selves. However, according to all medical and mental health providers who specialize in treating transgender children, the most important factor in maintaining the emotional health of the child is acceptance and support from their parents and family. Thus, the parents’ decision to file a name change on behalf of their transgender child is often critically important to their child’s well being. This decision is also deeply personal and private. To have to publically out their child by publishing the name change twice in the newspaper, is both unfair and unnecessary.

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For a number of years, some practitioners have been filing motions to waive the publication requirements for minors. These motions are almost always granted by the Court. However, a child's privacy should not depend on who or if the child has an attorney. Removing the publication requirement is a positive step in insuring the privacy of both the parents/guardians and the child.

For all of these reasons, as well as those set forth in the Notice to the Bar, I strongly support the change to R. 4:72 to remove the publication requirement.

Thank you for considering my comments.

Respectfully submitted,

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

EXHIBIT A

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