



Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
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October 14, 2020

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

Dear Judge Grant,

The Transgender Legal Defense & Education Fund (TLDEF), Lowenstein Sandler LLP (Lowenstein), and Garden State Equality submit these comments in support of the proposed amendments to *Rule 4:72* regarding publication in name change cases for minors and adults, as described in the September 14, 2020, Notice to the Bar (the “Notice”).

TLDEF is a 501(c)(3) nonprofit committed to ending discrimination and achieving equality for transgender people nationwide, 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/or nonbinary individuals in adopting legal names that conform to their gender identities. The project operates in eight states and is a certified pro bono provider in New Jersey under *Rule 1:21-11(b)*. Since its expansion into New Jersey in 2015, TLDEF’s Name Change Project has operated with Lowenstein as its core partner. Through this partnership, Lowenstein has represented dozens of transgender name change applicants in counties across the state. TLDEF and Lowenstein both strongly support this proposal.

Garden State Equality is New Jersey’s statewide advocacy and education organization for the lesbian, gay, bisexual, and transgender community. Established in 2004, Garden State Equality is the largest LGBTQ advocacy organization in New Jersey and one of the most successful statewide civil rights organizations for the LGBTQ community in the nation. Their services include advocacy, policy work, and training. Having been a key force behind the Babs Siperstein Birth Certificate Law, Garden State Equality and its members are strongly in support of this proposal.

We thank the Court for its continued commitment to seeking out and eliminating barriers to access to justice wherever they exist, and for giving us the opportunity to comment on the proposed amendments to *Rule 4:72*. As more fully explained below, the publication requirement is a dated and unnecessary requirement for all name change applicants, and it disproportionately burdens the transgender community in particular.

Importance of Judicial Name Changes

Transgender people almost always require a judicial name change to align their identity documents with their current name. Yet, according to the 2015 U.S. Transgender Survey of nearly 28,000 transgender people, only roughly 1 in 10 (11%) had all of their IDs and records accurately listing both their current name and gender.¹ That figure was only 6% for people with no income. More than two-thirds (68%) reported that *none* of their IDs or records had both their current name and gender.²

Identity documents are required for everyday transactions.

Post-9/11, basic transactions that require the presentation of identity documents include applying for public benefits such as Supplemental Nutrition Assistance Program,³ Social Security retirement benefits,⁴ Medicare,⁵ Social Security Disability Benefits,⁶ and Medicaid.⁷ Getting a job can require professional certifications and background checks, and all employees must fill out the U.S. Citizenship and Immigration I-9 form.⁸ You must also submit proof of a legal name change if you wish to change your name with Rutgers University.⁹ Other everyday activities that require presenting identification documents include obtaining a non-driver ID or driver's license,¹⁰ passport,¹¹ purchasing a gun,¹² and getting married.¹³ One must have a passport to travel internationally and a photo ID to fly domestically.¹⁴ Regulations under the 2001 USA PATRIOT Act require banks to verify a person's identity before they can open a bank account.¹⁵ Having the correct name on identity documents is therefore critical for engaging in everyday

¹ S.E. James, J.L. Herman, S. Rankin, M. Keisling, L. Mottet & M. Anafi, The Report of the 2015 U.S. Transgender Survey 85 (2016), <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF> [hereinafter U.S. Transgender Survey].

² *Id.*

³ Social Security Administration, Supplemental Nutrition Assistance Program Facts, <https://www.ssa.gov/pubs/EN-05-10101.pdf> (requiring "Identification such as a driver's license, state ID, birth certificate, work or school ID card, health benefits card, voter registration card, or alien card" to apply).

⁴ Social Security Administration, Information You Need To Apply For Retirement Benefits or Medicare, <http://www.ssa.gov/online/ssa-1.html> (may need to provide a birth certificate).

⁵ *Id.*

⁶ Social Security Administration, Disability Benefits, <https://www.ssa.gov/pubs/EN-05-10029.pdf> (requiring birth certificate).

⁷ While New Jersey only requires the information on identity documents and not the document itself to apply for a Marketplace plan, the information provided must match a person's identity documents. Thus, if a person wishes to apply for insurance using the name they go by, they must have a judicial name change order.

⁸ USCIS, Form I-9, Employment Verification, <https://www.uscis.gov/i-9>.

⁹ Rutgers University, More for First-Year Applicants, <https://admissions.rutgers.edu/applying/more-for-first-year-applicants#credentials>

¹⁰ New Jersey Motor Vehicle Commission, 6 Point ID Brochure, https://www.state.nj.us/mvc/pdf/license/ident_ver_posterpint.pdf.

¹¹ U.S. Dep't of State, U.S. Passport Application, <https://eforms.state.gov/forms/ds11.pdf>.

¹² New Jersey State Police Firearms Information, <https://www.njsp.org/firearms/firearms-faqs.shtml>.

¹³ State of New Jersey Department of Health, Required Documents When Applying for a Marriage License, <https://www.nj.gov/health/vital/registration-vital/marriage-licenses/#1>.

¹⁴ Transportation Security Administration, Identification, <https://www.tsa.gov/travel/securityscreening/identification>.

¹⁵ 31 C.F.R. § 1020.220(a)(2)(ii) (2017) (requiring banks to verify identity by examining identity documents or using other identity verification measures).

transactions and accessing basic rights and benefits. Many of these rights, including the right to vote, marry, travel,¹⁶ and bear arms, have constitutional implications.

Access to judicial name changes is important because common law name changes are inadequate to update identity documents.

Common law name changes do not provide the same relief afforded by a statutory name change. Given the importance of identity documents today, a judicial name change is essentially required to get any identity documents in the new name. For example, the Social Security Administration (SSA) does not honor common law name changes, and individuals cannot receive a paycheck in their preferred names without being able to update their names with the SSA.¹⁷

Similarly, a court order is required to change the name on a New Jersey birth certificate.¹⁸ The New Jersey Department of Motor Vehicles requires “a court order linking the new name with the previous name” to change the name on a driver license or non-driver ID card.¹⁹ While the U.S. Department of State theoretically allows for common law name changes to change the name on a U.S. passport, to do so requires presenting “a valid ID issued in the name you currently use.”²⁰ While this assists people who had a common law name change years ago, since there is no longer a mechanism to get a valid ID in the new name without a court-ordered name change, this policy is illusory.

Requiring Publication Disproportionately Burdens the Transgender Community

As the Court acknowledged in the Notice, *Rule 4:72*'s publication requirement was established at a time when the newspaper was the main vehicle used to notify people of things. But that is no longer the case. Creditors do not scour the newspaper to find out whether a debtor has changed their name. As more fully explained below, this information is now readily available in other places, and people are tracked in much more comprehensive ways.

Rather than informing relevant parties of the petitioner's name change, publication in the newspaper—particularly for transgender petitioners—now only serves to divulge private medical information (the fact of someone's transgender status) and give bad actors a roadmap to interfere with a transgender petitioner's name change and safety. Over the years, the Name Change Project has had multiple clients who received harassing communications from strangers as a result of publishing their name change notices. Transgender people disproportionately face

¹⁶ See *Shapiro v. Thompson*, 394 U.S. 618 (1969) (holding that an individual's right to travel is a fundamental right).

¹⁷ The Social Security Administration's Program Operations Manual System provides a list of events that are the basis for a name change. RM 10212.010 Evidence of a Name Change on the SSN (2014), <http://policy.ssa.gov/poms.nsf/lnx/0110212010>; SSA Program Operations Manual System, RM 10212.165 Examples of Name Changes and Corrections that SSA Cannot Process (2013), <http://policy.ssa.gov/poms.nsf/lnx/0110212165>.

¹⁸ New Jersey Department of Health, Correcting a Vital Record – Name Changes, <https://www.nj.gov/health/vital/correcting-vital/index.shtml#1>. (requiring “a copy of the original judgment of name change”).

¹⁹ New Jersey Motor Vehicle Commission, Name Change, <https://www.state.nj.us/mvc/drivertopics/namechange.htm>.

²⁰ U.S. Department of State, Change or Correct a Passport, <https://travel.state.gov/content/passports/en/passports/service/correction.html>.

violence both generally and from intimate partners.²¹ “Nearly 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.”²²

Employment discrimination, although illegal, is also an unfortunate reality for many transgender people. An employer discovering someone’s transgender status through a name change publication can present risks to that person’s job, or even safety. Compelling a transgender person to publicize their identifying information in a way that clearly links it to their transgender status puts them at risk for virtually no public benefit.

In streamlining the name change process for minors in 2019, the Supreme Court’s Committee on Minority Concerns recommended that publication be waived as a matter of course for transgender minors.²³ We applaud this recommendation; but as we have just shown, many of the same privacy and safety concerns acknowledged with regard to minors apply to transgender adults. There is little justification for distinguishing between transgender minors and adults when it comes to publication.

Publication is also an additional, unanticipated cost that disproportionately burdens transgender people. In our experience with the Name Change Project, the two publications required for each name change can cost up to \$300, depending on the newspaper. This creates a significant barrier for transgender people, as they experience higher rates of poverty and homelessness than the wider population. According to the 2015 U.S. Transgender Survey, 29% of respondents reported living in poverty (compared to 12% of the national population), and nearly 30% reported having experienced homelessness at some point.²⁴ While publication waiver is technically possible, it is a complex procedure that typically requires attorney involvement for the average petitioner, imposing yet another cost, and many petitioners continue to be unaware that requesting such a waiver is even an option. In sum, publication is just another financial barrier to name changes for an already overburdened community for whom name changes are essential.

Disposing of the Publication Requirement Will Not Hinder Access to Civil and Criminal Records for Those Who Need to Access Them.

Removing the publication requirement would not conceal applicants’ criminal and civil information from public authorities and creditors. This further shows the futility of publication in the name change process.

Applicants would still have to provide this information to government entities under applicable statutes and rules. For example, aside from publication, all applicants must notify the Director of the Division of Criminal Justice of their application after receiving a hearing date.²⁵ They must

²¹ 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>.

²² *Id.* at 198.

²³ 2017-2019 Supreme Court Committee on Diversity, Inclusion, and Community Engagement Biennial Report at 25, <https://njcourts.gov/courts/assets/supreme/reports/2019/minorityrpt.pdf>.

²⁴ *Id.* at 5.

²⁵ R. 4:72-3.

then send a copy of any judgments to the Department of Treasury.²⁶ Criminal histories require even more notices. Applicants must disclose whether they have any convictions and/or pending criminal charges in the petition itself.²⁷ If criminal charges are pending, the applicant must serve a copy of the application on the relevant prosecutor before the hearing.²⁸ The court will also send a copy of any judgments to the Bureau of Identification in the Division of State Police if the applicant has convictions or pending charges.²⁹

Creditors and other interested members of the public would likewise still be able to access applicants' relevant information. Through the New Jersey Judiciary's website, anyone with Internet access can view name change dockets and filings³⁰ and search for statewide judgments by name or docket number.³¹

Conclusion

Rule 1:1-2 provides that "any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice." For transgender name change petitioners, it is rare that newspaper publication would not cause such injustice. If a case's facts warrant specific notifications, a judge may so order. But it is time to remove the blanket burden of publication. It no longer serves its purpose for anyone and may, in fact, cause particular, undue harm for transgender petitioners.

Sincerely,

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²⁶ R. 4:72-4.

²⁷ N.J.S.A. 2A:52-1.

²⁸ *Id.*; R. 4:72-1.

²⁹ N.J.S.A. 2A:52-2; R. 4:72-4.

³⁰ New Jersey Courts, Civil Case Jacket Public Access,

<https://portal.njcourts.gov/webcivilcj/CIVILCaseJacketWeb/pages/civilCaseSearch.faces>.

³¹ New Jersey Courts, Judgment Search,

<https://portal.njcourts.gov/webe4/JudgmentWeb/jsp/judgmentSearchResult.faces>.