

**Pennsylvania Bar Association  
Gay, Lesbian, Bisexual and Transgender Rights Committee  
Recommendation and Report  
Regarding Transgender Persons Seeking Change of Name**

**I. Recommendation.**

The Gay, Lesbian, Bisexual and Transgender Rights Committee (GLBT) recommends that the Pennsylvania Bar Association (PBA) advocate for changes to the law that promote safety and confidentiality in the name change process for transgender people in our Commonwealth.

**A. Specific changes requested.**

This recommendation sets forth policies and procedures for (1) waiver of publication of notice of a petition for name change, under 54 PA.C.S.A. §701(a.1)(3)(iii), (2) sealing of the record, (3) closure of the hearing, and/or (4) other protections of confidentiality for transgender petitioners.

**B. No binding continuing support presumed.**

Approval of this recommendation shall not commit the House of Delegates to approve or recommend any resulting proposed legislative or rule change.

**II. Report**

**A. How this recommendation advances PBA's purposes.**

Consistent with the PBA's Articles of Incorporation, this recommendation, if adopted as a resolution and policy of the PBA, would advance several of the Association's purposes: (1) advancing the science of jurisprudence, by balancing the interests of sensitive confidential proceedings against the value of open courts; (2) promoting the administration of justice, by ensuring there is a uniform approach to transgender name change petitions across the Commonwealth, thereby reducing arbitrary differences between the different judicial districts and courts; and (3) securing proper legislation, by advocating for clear, concise, efficient rules and laws that pertain to this subject and allow for consistent application so as to promote predictability and uniformity across the Commonwealth.

**B. The goal of this recommendation is to reduce harm and promote equal access.**

The goal of this recommendation is to enable transgender and gender nonconforming persons to claim their identity at reduced risk of stigma, ostracism, harassment and violence. This goal does not seek special treatment for transgender persons, but recognition that equality requires that the law and court rules take into consideration the specific needs related to protection of their

safety and privacy. The contemplated rules would address those needs consistent with established law where particular filing, publication and record-keeping procedures are utilized to protect privacy, safety and other sensitive interests. Many states address this issue; Pennsylvania should as well, through a fair, consistent, compliant legal process.

**C. Existing Pennsylvania efforts that support PBA action.**

This would be consistent with Pennsylvania's growing recognition of the legal and social needs of its LGBTQ+ population, as already evidenced by: (1) the creation of the Pennsylvania Commission on LGBTQ Affairs, the first in the nation; (2) the Pennsylvania Human Relations Commission's recently revised Sex Discrimination Guidelines, which now address sexual orientation and gender identity; (3) the Interbranch Commission for Gender, Racial, and Ethnic Fairness; (4) the inclusion, at the Pennsylvania Conference of State Trial Judges February 2018 conference, of educational sessions addressing the needs of transgender persons; and (5) the Minor Judiciary Education Board's mandatory training program.

**D. How this recommendation is consistent with existing PBA strategies.**

The Committee proposes to approach and work with the Civil and/or Orphans' Court Rules Committee(s) on rules to protect the safety of transgender adults and minors in the statutory legal name-change process, consistent with the law on open courts and access to the courts.

Similar to past work on sensitive areas relating to domestic violence or child welfare issues, this approach allows the PBA to work with the lawyers and judges who serve on the relevant rules committees to consider the unique, particular risks of harm, including violence faced by transgender persons whose transgender status would be made public through the publication, in newspapers, legal periodicals and publicly accessible online court dockets. This disclosure is particularly risky as the petitions and hearing dates necessarily include publication of their current and desired legal names that are associated with different genders. The strategy and approach will also include Orphans' Court Rules, so that transgender minors can receive the special attention and protections offered there to protect the minor's and his, her or their family's safety, privacy and confidentiality. The proposed rules shall not require a petitioner to establish or demonstrate a history of specific threats of jeopardy to him, her, or them.

**E. The background - The importance of name and gender.**

The Williams Institute estimates that there are approximately 1.4 million transgender or

gender non-conforming adults in the United States, with an estimated 43,800 in Pennsylvania.<sup>1</sup> As people mature and, for many, even long before legal majority, they develop awareness of their gender identity. Many begin to use, and then wish to have their names legally changed to, a name that is consistent with that identity. The transition process is highly individualized, and desire for name change is independent of whether transition will or will not include gender-corrective medical or behavioral health treatment.

### **1. What is in a name?**

A significant issue for transgender persons is name. Most were given names that were consistent with the gender they were presumed to be at the time of their birth. For people who are transgender, the name-change process has immense legal significance, given the increasing need for consistency in legal documents regarding identity, due to security and identity theft concerns. Harassment and violence often occur when a person must present identification documents showing a name and/or sex designation inconsistent with their gender presentation, and they are “outed” as transgender, meaning that others learn that the transgender individual’s gender identity differs from the gender assigned at birth. There is then an increased likelihood of verbal and physical assaults,<sup>2</sup> which often devolve into serious acts of harassment and violence.<sup>3</sup>

According to the United States Transgender Survey (USTS), 32% of transgender respondents reported negative experiences, such as being harassed, denied services, or attacked when they presented identification documents with names inconsistent with their gender identity or expression.<sup>4</sup> Nearly one-third of transgender individuals responding to the survey faced discrimination, harassment, or other negative experiences when presenting legal identification that did not match their gender. However, in the 2015 USTS report, only 9% of Pennsylvania respondents had all identification documents in their chosen name and gender; 69% reported that none had these.<sup>5</sup>

Name is a fundamental element of identity, starting at birth: psychological and social

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<sup>1</sup> Andrew R. Flores *et al.*, *How Many Adults Identify as Transgender in the United States*, pp. 3-4 (The Williams Institute, 2016).

<sup>2</sup> Kristin Kelley & Jeff Gruenewald, *Accomplishing Masculinity through Anti-Lesbian, Gay, Bisexual, and Transgender Homicide*, 18(1) *Men & Masculinity* 3, 4 (2014); Rebecca L. Stotzer, *Violence Against Transgender People*, 14 *Aggression & Violent Behav.* 170, 173-74 (2009).

<sup>3</sup> Kelley & Gruenewald, *supra* at 4.

<sup>4</sup> Sandy E. James *et al.*, *The Report of the 2015 U.S. Transgender Survey*, p. 89 (NCTE, 2017).

<sup>5</sup> National Center for Transgender Equality (NCTE), *2015 U.S. Transgender Survey: Pennsylvania State Report*, p. 3 (2017); Sandy E. James *et al.*, *The Report of the 2015 U.S. Transgender Survey*, p. 199 (NCTE, 2017).

studies have investigated the effects of giving a child a particular name. American, including Pennsylvania's, history shows that, too often, names are changed for negative reasons: immigrants who believed that changing their names would make them "American," or feared ostracism and violence, particularly if their heritage traced to a nation, culture or group with which the United States was at war or in strained relations; employers changing immigrants' names because they were deemed "foreign," "strange" or difficult to pronounce; entertainers who changed their names so as not to seem "too ethnic"; school bullies who mock or ridicule a classmate's name; and political, media and entertainment figures who disparage certain names, for supposed humor or to project a negative image of a demographic group associated with such names.

Naming and name changes can be for positive reasons as well. Many cultures have formal practices to name a new child. Many women take their new husbands' names after marriage. More recently, couples are combining names and hyphenating children's names to show family identity. Also, many blended families have the children take the adoptive or step-parent's name to show family membership. These examples of name change experiences show marriage and domestic partnerships as positive life events.

## **2. What is the significance of gender identity as it relates to name?**

Gender is equally fundamental to identity. First, gender identity reflects the individual's personal, internal sense of gender, hence of identity. He or she expresses that identity through clothing and other choices in personal appearance, such as hairstyle, accessories and cosmetics. A transgender individual's gender identity, expression, or behavior does not conform to those typically associated with his, her, or their assigned sex at birth.<sup>6</sup> Accordingly, name is a critical element of expressing gender identity. Research shows that transgender persons experience difficulties, and even risk harm, when they must use or display a name on legal documents that is inconsistent with their identity.<sup>7</sup> A person's name should be a positive element of expressing identity, not something that creates dissonance and fear of harm.

### **F. Current Pennsylvania Name-Change Law.**

Pennsylvania permits informal use of names, in order to have legal documents and identities change the court process set forth in law must be followed. The process is set forth in 54

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<sup>6</sup> See A. Evan Eyler, *Primary Medical Care of the Gender-Variant Patient*, in *Principles of Transgender Medicine and Surgery* 15, 19-21 (Randi Ettner et al. eds., 2007); see also C.M. Cole et al., *Treatment of Gender Dysphoria*, 90(5) *Tex. Med.* 68-72 (1994).

<sup>7</sup> James et al., *supra*, p. 89; 2015 *U.S. Transgender Survey: Pennsylvania State Report*, p. 3

PA.C.S.A. §§701-705. Individuals seeking a judicial change of name must file a petition in the court of common pleas for the county in which they reside.<sup>8</sup> The court may, by order, change the name of any county resident.<sup>9</sup> A minor whose custodial parent changes his or her surname by court proceedings will automatically assume that new surname unless otherwise ordered by the court.<sup>10</sup> The minor may reverse this order or otherwise change his surname upon reaching majority.<sup>11</sup>

Upon filing a petition, the court schedules a hearing, at which any person having a lawful objection to the proposed name change may appear and be heard.<sup>12</sup> The petitioner must publish notice of the filing and the date of the hearing.<sup>13</sup> At present, if the court finds that publication of notice of the name change petition would jeopardize the safety of the person seeking the name change or that of his or her child or ward, the notice requirement “shall be waived by the court.”

<sup>14</sup>It should be noted that the Pennsylvania legislature is presently considering legislation that would remove the local publication requirement and instead require publication in a public database. Although, the proposed legislation provides for automatic removal of the notice after the court hearing is held, the proposed legislation does not provide for any extra protections for this new form of publication. The pending legislation is H.B.433 PN 420.<sup>15</sup> This proposed legislation was referred to the House Judiciary Committee on February 11, 2019.

The Pennsylvania Supreme Court explained that the primary purpose of the name change statute is to prevent fraud, principally by those attempting to avoid financial obligations.<sup>16</sup> Once the petitioner completes the necessary filing documents, including proof of a judgment search, the necessity of a public notification is removed. In *Matter of McIntyre*, a transgender woman petitioned to change her name.<sup>17</sup> The trial court initially denied her petition because she had not provided proof that she was judgment free. The petitioner filed for reconsideration and proved the proof that she was judgment free. While the lower court granted reconsideration and accepted

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<sup>8</sup> 54 PA.C.S.A. §701.

<sup>9</sup> 54 PA.C.S.A. §702(a).

<sup>10</sup> 54 PA.C.S.A. §703(a).

<sup>11</sup> 54 PA.C.S.A. §703(b).

<sup>12</sup> 54 PA.C.S.A. §701(a.1)(3-4).

<sup>13</sup> 54 PA.C.S.A. §701(a.1)(3)(ii).

<sup>14</sup> 54 PA.C.S.A. §701(a.1)(3)(iii).

<sup>15</sup> <https://legiscan.com/PA/bill/HB433/2019>.

<sup>16</sup> *In re Change of Name of Zachary Thomas Andrew Grimes to Zachary Thomas Andrew Grimes-Palaia*, 530 Pa. 388, 609 A.2d 158, 160 (Pa. 1992) (“the necessity for judicial involvement centers on governmental concerns that persons not alter their identity to avoid financial obligations”).

<sup>17</sup> *Matter of McIntyre*, 552 Pa. 324, 715 A.2d 400, 401(Pa. 1998).

the evidence that petitioner was judgment free, the court still denied her petition because “granting the name change was premature and would be deceptive to the public and to Appellant's co-workers,” if she changed her name before she had her sex-reassignment operation.<sup>18</sup> The Supreme Court of Pennsylvania reversed, holding that a petitioner’s surgical status is not a governmental concern.<sup>19</sup> The statute must be construed liberally, so that courts should not impose restrictions where the legislature has not.<sup>20</sup> Although this case and ruling was not about publication or the notice preconditions in the name change statute, it does make it clear the statute conditions are in place to prevent fraud. It still remains unsettled law as to what is required for a transgender petitioner to show in order to protect from unnecessary and potentially harmful publication of intent to change a name.

Regarding minors, a party petitioning to change a minor’s name must present evidence showing that the change would be in the child’s best interest.<sup>21</sup> Factors in determining best interest include “natural bonds between parent and child, social stigma or respect afforded a particular name within community, and, where child is of sufficient age, whether child intellectually and rationally understands significance of changing his or her name.”<sup>22</sup>

### **G. Risks to transgender petitioners.**

Despite societal advances in understanding and acceptance, transgender people, as shown above, remain at greater-than-average risk for harassment, discrimination, physical and sexual violence. The USTS reports that “48% of all respondents in the survey reported that they were denied equal treatment or service, verbally harassed, and/or physically attacked because of being transgender in the past year.”<sup>23</sup> The study also found that “[t]hose who said that others could usually or always tell that they were transgender (66%) were more likely to report having one or more of these experiences because of being transgender, in contrast to those who said that others could rarely or never tell that they were transgender (39%).”<sup>24</sup>

The report found that, despite societal progress, “transgender people continue to face discrimination in numerous areas that significantly impact quality of life, financial stability, and

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<sup>18</sup> *Id.* at 401-402.

<sup>19</sup> *Id.* at 403.

<sup>20</sup> *Id.*

<sup>21</sup> *In re C.R.C.*, 819 A.2d 558 (Pa.Super. 2003).

<sup>22</sup> *Id.* at 560, quoting *Grimes, supra*, 530 Pa. at 394, 609 A.2d at 161.

<sup>23</sup> Sandy E. James et al., Nat’l Ctr. Transgender Equal., *The Report of the 2015 U.S. Transgender Survey* 199 (2017).

<sup>24</sup> *Id.*

emotional wellbeing, including employment, education, housing, and health care.”<sup>25</sup>

Of those who responded to the survey, 13% had been physically attacked in the past year, 66% of whom had been physically assaulted because they were transgender or gender non-conforming.<sup>26</sup> Over half (54%) of the respondents that had been physically attacked in the past year reported that they had been attacked two or more times that year.<sup>27</sup> Nearly half (47%) of respondents had been sexually assaulted at some point in their lifetime, 10% of which occurred in the past year.<sup>28</sup>

Respondents also reported that when they visited a place of public accommodation, where staff or employees thought or knew they were transgender, 16% were denied equal treatment or service, 25% were verbally harassed, and 2% were physically attacked because of being transgender.<sup>29</sup> In an article reviewing U.S. data about crimes against transgender individuals, the study found that, in crimes based on their gender identity, 41% had been followed or stalked, and 18% had experienced intimidation in some form, including vandalism, blackmail, or extortion.<sup>30</sup>

The jeopardy to safety cited in Pennsylvania’s name change statute, therefore, should include recognition of the inherent risks for transgender petitioners, where overall they risk stigma, ostracism, even violence when they are identified as transgender, as set forth in the foregoing reports and a 2017 report by the Human Rights Campaign.<sup>31</sup> This includes violence against transgender adolescents.<sup>32</sup>

As shown, these risks are created or increased when a transgender person must provide identification inconsistent with their gender identity. Indeed, for many transgender persons, it is in their interests to obtain identification documents consistent with their identity and that will not “out” them by producing it. At present, Pennsylvania’s name-change process, as practiced in many

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<sup>25</sup> *Id.* at 19.

<sup>26</sup> *Id.* at 202-203.

<sup>27</sup> *Id.* at 204.

<sup>28</sup> *See id.* at 205-06. *But see* Matthew J. Breiding et al., Ctrs. for Disease Control & Prevention, *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence*. 63(8) MMWR 1, 5-8 (2014). The CDC’s National Intimate Partner and Sexual Violence Survey (NISVS) reported that 11% of the general population has been raped in their lifetime, 19% have experienced unwanted sexual contact, and 10% have experienced sexual coercion.

<sup>29</sup> *Id.* at 2.

<sup>30</sup> Rebecca L. Stotzer, *Violence Against Transgender People*, 14 *Aggression & Violent Behav.* 170, 175 (2009).

<sup>31</sup> [http://assets2.hrc.org/files/assets/resources/A\\_Time\\_To\\_Act\\_2017\\_REV3.pdf?\\_ga=2.94264093.1410618572.1553214701-1100500933.1553214701](http://assets2.hrc.org/files/assets/resources/A_Time_To_Act_2017_REV3.pdf?_ga=2.94264093.1410618572.1553214701-1100500933.1553214701).

<sup>32</sup> Michelle M. Johns et al., *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors Among High School Students — 19 States and Large Urban School Districts*, 2017 (Centers for Disease Control and Prevention, Weekly, January 25, 2019).

of its courts, can undermine that goal. Obviously, procedures which require publication of notices of name-change filings; use of full names in petitions, open hearings; and unsealed court records, can pose a serious risk to a transgender petitioner just because they are transgender. Posting on court and other public websites, as contemplated by H.B.433, of notices or court filings of the proceedings upon name change petitions increases this risk. Such publication and public access allow for easier access by the malevolent and anti-transgender individuals who search these dockets for the purpose of threatening, intimidating, harassing, even harming, transgender persons. At present, a basic Internet search discloses name-change notice publications dating back at least to January 2015.

Although the statute currently provides for waiver of publication if there is a risk of jeopardy, it does not define nor delineate what constitutes jeopardy, and there is inconsistency among the courts. The statute is statewide, but the rules and procedures for proceedings for adjudicating name-change petitions vary among Pennsylvania counties, including the manner in which judges assess requests to waive of publication and seal court files. For example, practitioners have encountered a less likely chance of success in waiver requests in Montgomery County,<sup>33</sup> while Philadelphia and Allegheny County judges appear to be more experienced and familiar with transgender petitioners' safety concerns, hence those courts are more receptive to granting waiver requests. Overall, experiences in Montgomery and Philadelphia Counties, together with Bucks, Delaware and Chester, have varied. Allegheny County has a judge dedicated to name change petitions, and offers the *Name Change Project Attorney Handbook for Allegheny County*, provided by the Transgender Legal Defense and Education Fund.<sup>34</sup>

Consistent and well-informed rules and procedures to protect transgender petitioners are thus needed, so that transgender petitioners' rights do not depend upon county of residence or a particular judge's docket.

#### **H. The individual need for confidentiality outweighs the interest in open courts.**

Any request to waive publication of a legal notice, file a document under seal, close a proceeding or seal a judicial record invokes the issue of openness of courts, keeping in mind that the Pennsylvania name change statute specifically requires waiver of publication and sealing of

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<sup>33</sup> see, e.g., Judge denies name change for trans youth, Philadelphia Gay News, March 2, 2016, <http://www.epgn.com/news/breaking-news/10072-judge-denies-name-change-for-trans-youth>,

<sup>34</sup> [http://www.transgenderlegal.org/media/uploads/doc\\_618.pdf](http://www.transgenderlegal.org/media/uploads/doc_618.pdf)

the court records upon a finding of jeopardy to safety.<sup>35</sup>

Even independent of a statutory provision court records can be sealed from the public. In Pennsylvania, appellate courts have recognized that the public has a presumed right of access to court records<sup>36</sup>, so that parties requesting sealing of a record must overcome the “common law presumption of openness.”<sup>37</sup> The Superior Court, in *R.W. v. Hampe*, noted at that “a party must show that her personal interest in secrecy outweighs the traditional presumption of openness.”<sup>38</sup> However, this right is not absolute<sup>39</sup>: certain exceptions are laid out in Case Records Public Access Policy of the Unified Judicial System of Pennsylvania.<sup>40</sup> Under these court rules, the law clearly protects disclosure of some very diverse information, and allows protective measures in the interests of safety, privacy and confidentiality.

Regarding the public’s interest, there is rarely any legitimate public interest in a name change, as the petitioner is rarely a public figure.<sup>41</sup> Additionally, any legitimate interest is minimal, given that petitioners must attest that they are not seeking to change their legal name to avoid financial or other obligations, and because background checks and fingerprinting are already mandatory in the name change process under Pennsylvania law.

The courts also allow sealing of court records in matters ranging from adoption records to treatment records under the Mental Health Procedures Act. The Mental Health Procedures Act allows protection from public view, subject to specifics delineated in the regulations, of: (1) of records relating to births;<sup>42</sup> and (2) information presenting a risk to personal security, personal privacy, or the fair, impartial and orderly administration of justice, as determined by the Court Administrator with the Chief Justice’s approval.<sup>43</sup>

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<sup>35</sup> 54 PA.C.S.A §701(a.1)(3)(iii).

<sup>36</sup> *Hutchison by Hutchison v. Luddy*, 417 Pa.Super. 93, 611 A.2d 1280 (1992), *appeal dismissed per curiam as moot*, 538 Pa. 484, 649 A.2d 435 (1994)(courts have recognized both a common law and constitutional right of public access), citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580, 100 S.Ct. 2814, 2829 (1980).

<sup>37</sup> *R.W. v. Hampe*, 426 Pa. Super. 305, 310, 626 A.2d 1218 (1993)(reversing the trial granting the use of initials for caption identification in a medical malpractice case).

<sup>38</sup> *Hampe*, 426 Pa.Super. at 310 n. 3 (citation omitted). The court also held that use of this test means that another First Amendment-related test, often used by journalists to unseal records, is not required, citing *Krenzelak v. Krenzelak*, 503 Pa. 373, 469 A.2d 987 (1983); *Ballou v. State Ethics Comm'n.*, 496 Pa. 127, 436 A.2d 186 (1981); *Commonwealth v. Kennedy*, 413 Pa.Super. 95, 604 A.2d 1036 (1992).

<sup>39</sup> *Hutchison*, 417 Pa.Super. at 112, citing *In re National Broadcasting Co.*, 653 F.2d 609, 613 (D.C.Cir.1981).

<sup>40</sup> 204 Pa.Code §213.81, *et seq.*

<sup>41</sup> *See e.g., Lozano v. City of Hazleton*, 496 F. Supp. 2d 477, 512 (M.D. Pa. 2007) (plaintiffs allowed to proceed anonymously when they were not public figures and any legitimate public interest in the case would focus on the legal issues at stake).

<sup>42</sup> 20 PA.C.S.A. §711(9).

<sup>43</sup> 204 Pa.Code §213.81(9.0).

In cases not protected by statute or regulation, a court may order seal if it finds that “a ‘clearly defined and serious injury’ would occur but for the sealing of the records”<sup>44</sup>. Even in publicly available records, certain confidential information, such as Social Security numbers, financial information, and names and birthdates of minors, must be redacted.<sup>45</sup>

Absent a statute, a party requesting sealing must move for leave to file under seal, “explain[ing] why the presumption of public access to the documents is outweighed by a compelling public or private interest, such as. . . to protect the confidentiality of an ongoing criminal investigation or the privacy and reputations of innocent parties, or to minimize the danger that a defendant's rights to a fair trial are harmed by adverse publicity.” The motion should show that other alternatives, such as filing the documents in a redacted form, would be inadequate to protect the governmental interests at issue.”<sup>46</sup> Supporting documents must be filed with the motion, including a memorandum of law, an affidavit by the client, the documents that are the subject of the motion, and a proposed order.<sup>47</sup>

*Hutchinson by Hutchison v. Luddy*, illustrates the law on sealing records in sensitive cases, where the Diocese of Altoona-Johnstown was involved in priest-pedophilia litigation.<sup>48</sup> In 1988, a judge in a prior case ordered the record sealed. Appellees later moved to open the record, arguing that it was impeding discovery in a related case. Another judge granted this request. The ultimate issue was whether the seal order should be removed.<sup>49</sup> Although the court implied that the order was proper when issued,<sup>50</sup> it upheld later decisions to open the record because circumstances had changed, and the prior seal was now impeding discovery in a related case.<sup>51</sup>

The case of *In re Estate of DuPont*, involved a declaration of incompetence.<sup>52</sup> Plaintiff sought a trust payout, and sought unsealing of an incompetency proceeding in order to review the records therein for proof that a portion of the trust was promised to him.<sup>53</sup> The Superior Court

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<sup>44</sup> *Hutchison*, 417 Pa.Super. at 113, citing *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1070-1071 (1984).

<sup>45</sup> *Filing Under Seal (PA)*, Practical Law Practice Note w-000-1481, citing 204 Pa. Code § 213.81 (7.0)(A).

<sup>46</sup> *Id.*, citing *Hutchison*, 417 Pa.Super. 93; *Katz*, 514 A.2d at 1377; *In re Estate of duPont*, 2 A.3d 516, 525 at n. 13 (Pa. 2010); *Com. v. Fenstermaker*, 530 A.2d 414, 420-21 (1987); *PA ChildCare LLC v. Flood*, 2005 PA Super 387, 887 A.2d 309, 312 (2005).

<sup>47</sup> *Filing Under Seal (PA)*, Practical Law Practice Note w-000-1481.

<sup>48</sup> *Hutchison by Hutchison v. Luddy*, 417 Pa.Super. 93, 611 A.2d 1280 (1992).

<sup>49</sup> *Hutchison*, 417 Pa.Super. at 102-104.

<sup>50</sup> *Id.* at 110-111.

<sup>51</sup> *Id.* at 113.

<sup>52</sup> *In re Estate of DuPont*, 2009 PA Super. 29, 966 A.2d 636, 637 (2009), *aff'd*, 606 Pa. 567, 2 A.3d 516 (2010).

<sup>53</sup> *In re Estate of DuPont*, 966 A.2d at 637 (2009).

rejected the request, because a litigant requesting unsealing must show good cause, which the plaintiff failed to do<sup>54</sup>; the Supreme Court affirmed.<sup>55</sup> Attorney disbarments, in which there is also a public interest, may include documents filed under seal.<sup>56</sup>

Divorce cases can also be exceptions to the presumption of openness, where, as in *Katz v. Katz*, openness of the proceedings “could serve only to embarrass and humiliate the litigants” and “involve matters which are essentially private in nature and . . . lack any useful, public purpose.”<sup>57</sup>

In criminal cases, where there is clearly a public interest, the new “Clean Slate” law allows individuals to petition for sealing of their records if they have been free from conviction for 10 years for an offense that resulted in a year or more in prison.<sup>58</sup> Crimes for which records may be sealed include many first-degree misdemeanors and second-degree simple assault. Once sealed, records may only be viewed by law enforcement entities (*e.g.*, police, prosecutors and courts), employers who must consider such records under federal law, and employers who use FBI background checks.

As noted, the use of initials-only in cases involving sensitive, personal matters has long been allowed, such as family, custody and protection from abuse matters, and civil and criminal matters involving minors. The Supreme Court recently applied this in a case involving *in loco parentis* status between a same-sex couple.<sup>59</sup>

With respect to the required showing of jeopardy to waive publication of a name change petition notice, the United States Supreme Court’s ruling in *NAACP v. Alabama*, is instructive.<sup>60</sup> There, the United States Supreme Court found that membership lists of an organization should be protected, where there was a general history of violence and threats to the organization and its members; there would be no requirement of proof of specific risk or threat as to each individual member.<sup>61</sup>

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<sup>54</sup> *Id.* at 638.

<sup>55</sup> *In re Estate of DuPont*, 2 A.3d 516 (2010)(the presumption of open court does not shift the burden to the party with the confidential sealed court document).

<sup>56</sup> See, *e.g.*, *Office of Disciplinary Counsel v. Cirillo*, Docket No. 179 DB 2016 (November 18, 2016) (resignation statement filed under seal); <https://casetext.com/case/office-of-disciplinary-counsel-v-cirillo>.

<sup>57</sup> *Katz v. Katz*, 356 Pa.Super. 461, 472, 514 A.2d 1374 (1986).

<sup>58</sup> Act 5 of 2016, H.B. 1419

<sup>59</sup> *C.G. v. J.H.*, 193 A.3d 891 (Pa. 2018).

<sup>60</sup> *NAACP v. Alabama*, 357 U.S. 449, 78 S.Ct. 1163 (1958).

<sup>61</sup> See Luke Wachob, *NAACP v. Alabama: When “Transparency” Becomes Censorship*, Institute for Free Speech, June 28, 2018; <https://www.ifs.org/research/naacp-v-alabama-when-transparency-becomes-censorship/> (discussing dangers to members of unpopular groups or holders of unpopular opinions, including the effect of Internet accessibility to information).

## **I. Conclusion.**

This likewise applies to transgender persons. As shown by the research cited above, as a group they face risks of harassment, threats and violence, including by persons who learn of their name change petitions through searches of court and other public websites. The legitimate public interest in a particular individual's name change proceedings is minimal or nonexistent. Transgender petitioners should thus be protected by consistent rules, applicable in all of the Commonwealth's counties, addressing this particular jeopardy within the parameters of existing rules, practices and procedures for protecting safety, privacy and confidentiality in other cases involving sensitive, personal matters and issues, but without requiring a specific showing of jeopardy as to the individual petitioner. This would be consistent with liberal construction of the name change statute. It would also be consistent with the principle and law of openness of the courts, where appropriate rules would close proceeding to the public, but hold open the courts' doors to vulnerable persons who might otherwise be reluctant – even justifiably afraid – to walk through them to formalize their new, true identities.

Respectfully submitted:

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