NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA
Fairfax County Courthouse
4110 Chain Bridge Road
Fairfax, Virginia 22030-4009
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July 26, 2023

E.B.M.[1]
2947 Ashdown Forest Drive
Herndon, Virginia 20171
Ellamcel@yahoo.com
*Pro Se* Petitioner

**Re: *In Re: E.B.M.***
**Case No. CL–2022-13405**

Dear E.B.M.:

The issue before the Court is whether it may seal from public inspection a name change order and related records 21-days after entry of the order. The Court holds it may not do so.

Even if the Court had authority to seal the name change order and related records, the movant in the present case failed to proffer a serious threat to her health or safety to justify sealing the public record.

For both reasons the Court will issue an Order denying the motion to seal.

## I. FACTUAL BACKGROUND.

E.B.M. petitioned the Court to change her name on October 3, 2022. The Court granted the petition by Order entered October 11, 2022.

Pursuant to Virginia Code § 8.01-217(F), the Court ordered the Clerk of Court to spread the Order upon the current deed book, index it in both the old and new names, and transmit a certified copy to both the State Registrar of Vital Statistics and the Criminal Records Exchange.

[1] The Petitioner requested that the Court use her initials to identify her in this Opinion Letter. The record is not sealed, however

Over ten months after the Court entered the name change order, on July 12, 2023, E.B.M. filed the present motion, citing no legal authority for the Court to seal the name change Order and related records so long after entry of the Order.

E.B.M. told the Court she wanted to seal the name change Order and related records due to a general fear of harm from transgender community opponents. She cited no current particularized or specific harm towards her arising from the public name change.

## II. ANALYSIS.

### A. The Statute Permitting the Sealing of Name Change Records is Prospective and a Petitioner Must Raise it at the Time of the Petition.

A Petitioner who wants to seal her name change records must raise the issue at the time of the name change. She may not wait until after the name change is a public fact.

Virginia Code § 8.01-217(F) reads:

> The [name change] order shall contain no identifying information other than the applicant's former name or names, new name, and current address. The clerk of the court shall spread the order upon the current deed book in his office, index it in both the old and new names, and transmit a certified copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange. Transmittal of a copy of the order and the application to the State Registrar of Vital Records and the Central Criminal Records Exchange shall not be required of a person who changed his or her former name by reason of marriage and who makes application to resume a former name pursuant to § 20-121.4.

There is an exception to § 8.01-217(F), which allows the Court to seal the name change records and prevent the name change order from being indexed and transmitted to state agencies. Virginia Code § 8.01-217(G) reads:

> If the applicant shall show cause to believe that in the event his change of name should become a public record, a serious threat to the health or safety of the applicant or his immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the clerk not to spread and index any orders entered in the cause, and a certified copy shall not be transmitted to the State Registrar of Vital Records or the Central Criminal Records Exchange. At such time as a name change order is received by the State Registrar of Vital Records, for a person born in the Commonwealth, together with a proper request and payment of required fees, the Registrar shall issue certifications of the amended birth record which do not reveal the former name or names of the applicant unless so ordered by a court of competent jurisdiction. Such certifications shall not be

> marked 'amended' and show the effective date as provided in § 32.1-272. Such order shall set forth the date and place of birth of the person whose name is changed, the full names of his parents, including the maiden name of the mother and, if such person has previously changed his name, his former name or names."

The General Assembly clearly intended a petitioner to request the sealing of name change records at the time of the petition. The legislature filled paragraph G of the statute with forward thinking terms and phrases that only make sense in the situation where the Court has not yet entered the name change order and it is not yet a public record. The statute refers to the petitioner as "the applicant." However, one who successfully petitions for a name change is no longer an "applicant" since the Court granted the application. The same paragraph continues prospectively: "If the applicant shall show cause to believe that in the event his change of name *should become* a public record" resulting in a serious threat to the applicant's health or safety then the order may be sealed. *Id.* (Emphasis supplied). The phrase "should become" is in the future tense. However, after entry, the name change has already become a public record. The statute then directs the Clerk "*not to spread and index* any orders entered in the cause, and a certified copy *shall not be transmitted* to the State Registrar of Vital Records or the Central Criminal Records Exchange." *Id.* (Emphasis supplied). Logically, the motion to seal must occur before the records are "spread," "indexed," or "transmitted." After these actions happen, the Court could no longer abstain from taking those actions.

The obvious purpose of the statute is to protect one who is then changing one's name from danger by hiding the fact of one's name change as it happens, not after it is already public. In the latter instance, the person with the publicly changed name is situated identically as one who never changed her name, but who also wants to hide her identity. Just as one who never changed her name may not seal her name from the public records, a person who publicly changed her name may not do so.

In the present case E.B.M. is not an "applicant." She won her name change petition almost ten months ago. Her change of name is already a public record and the Court already spread and indexed the name change Order. The Clerk already transmitted a certified copy of the Order to the State Registrar and the Central Criminal Records Exchange. Thus, E.B.M. lacks standing as an "applicant" and is seeking to prevent things that have already happened.

The General Assembly could grant the Court power to expunge name change orders already indexed and transmitted but has not done so. Without this authority, the Court lacks the power to claw back records already transmitted to the State Registrar of Vital Records and the Central Criminal Records Exchange. The Court must apply the law as is written, not as parties or a court would have preferred it to be written—even if the preferred law would be wise, necessary, or expedient. *See Appalachian Power Company v. State Corporation Commission*, 301 Va. 257, 279 (2022); *Hackett v. Commonwealth*, ___ S.E.2d ___, 2023 WL 4710974, at *6 (Va. App. Jul. 25, 2023).

### B. The Court Lacks Active Jurisdiction to Reopen the Name Change Order.

Independent from Virginia Code § 8.01-217(G), the Court lacks active jurisdiction to reopen the final order granting E.B.M. her name change petition. VA. SUP. CT. R. 1:1. The Court lost jurisdiction over that final order 21-days after entry. *See Monroe v. Monroe, et al.*, ___ S.E.2d ___, 2023 WL 4629601, at *4 (Va. App. Jul. 20, 2023); *Id.*

> Unless otherwise provided by rule or statute, a judgment, order, or decree is final if it disposes of the entire matter before the court, including all claim(s) and all cause(s) of action against all parties, gives all relief contemplated, and leaves nothing to be done by the court except for the ministerial execution of the court's judgment, order, or decree. VA. SUP. CT. R. 1:1.

The Court entered E.B.M.'s name change Order October 11, 2022. It was a final order and the Court lost active jurisdiction to amend or modify it 21-days later. The Court has authority to seal its own file in appropriate circumstances. *See Falkoff v. Falkoff*, 103 Va. Cir. 405 (Fairfax 2019). However, it lacks the active jurisdiction necessary to claw back records transmitted to the State Registrar of Vital Records and the Central Criminal Records Exchange which were directly commanded to be transmitted in a final order.

The Court lacks active jurisdiction in this case sufficient to grant the relief E.B.M. requests.

### C. Petitioner Did Not Allege a Serious Threat to Her Health or Safety to Justify Sealing.

Even if the Court had authority to seal name change orders more than 21-days after entry, the Court finds Petitioner failed to allege or proffer a "serious threat" to her health or safety to justify sealing the record. VA. CODE ANN. § 8.01-217(G).

E.B.M., in her Motion to Seal Change of Name, stated that she wanted to prevent "potential endangerment and/or discrimination through publicly disclosed record of the transgender applicant." At the July 21, 2023, hearing on her motion she amplified her reasons to include concerns due to her political activism. However, and fortunately, she did not cite a single specific or particularized fear that would justify sealing the name change records. She only pointed to generalized and imagined future fears or harms. She implicitly asks the Court to amend the statute to replace the phrase "serious threat" with "a generalized concern." The Court must apply the law as is written, however. *See Appalachian Power Company*, 301 Va. at 279; (2022); *Hackett*, ___ S.E.2d at ___, 2023 WL 4710974, at *6.

Because the Court finds E.B.M. failed to sufficiently proffer a "serious threat" to her health or safety caused by her name change order and records being public, the Court may not seal the record per the applicable statute.

## III. CONCLUSION.

Virginia Code § 8.01-217(G) permits the Court to seal a name change order and not index the order and transmit it to the State Registrar of Vital Records and the Central Criminal Records Exchange as paragraph F of the statute otherwise mandates. However, the Court may only do this at the time of the name change or 21-days thereafter. E.B.M. waited too long to request that the Court seal her name change records.

Even if the Court had authority to grant E.B.M.'s motion, the Court finds she failed to proffer a serious threat to her or her immediate family's health or safety relating to her name change remaining a public record.

The Motion to Seal will be denied. An appropriate Order is attached.

Kind regards,

[redacted]

David A. Oblon
Judge, Circuit Court of Fairfax County
19th Judicial Circuit of Virginia

Enclosure

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

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|---|---|
| IN RE: E.B.M.[1] | Civil Action No. CL-2022-13405 |

**ORDER**

THIS MATTER came before the Court July 21, 2023, on Petitioner's Motion to Seal Name Change. It is

ADJUDGED for the reasons set forth in the Opinion Letter issued this day, which is incorporated into this Order by reference, Petitioner's Motion to Seal should be denied. Therefore, it is

ORDERED Petitioner's Motion to Seal is DENIED.

THIS CAUSE IS ENDED.

[redacted]

Judge David A. Oblon

JUL 26 2023

Entered

PURSUANT TO RULE 1:13 OF THE RULES OF THE SUPREME COURT OF VIRGINIA, ENDORSEMENT OF THIS ORDER IS WAIVED BY DISCRETION OF THE COURT. ANY DESIRED ENDORSEMENT OBJECTIONS MAY BE FILED WITHIN TEN DAYS.

[1] The Petitioner requested that the Court use her initials to identify her in this Order. The record is not sealed, however.