

Dear friends,

We have all experienced a calamitous 2020; each in our own way. I hope that you are managing and learning to navigate the challenges.

Were it a “normal” year, I might be holding a seminar to give you an update on developments in LGBTQ+ law and politics. Please accept this written message instead.

Here are answers to questions that I get asked repeatedly and some good news about two significant legal advances in New Jersey for our community.

Most asked questions: Is my marriage at risk? Are our rights as a parent at risk?

No matter what happens, if you are married, your marriage is secure. The Obergefell decision by the US Supreme Court ruled that all states have to offer same-sex couples the right to marry. It is highly doubtful that the realigned court would overrule that decision.

Even were Obergefell reversed, existing marriages would still be recognized. The right to marry is controlled by state law definitions, not federal law. If you live in New Jersey, you will still be able to get married. The New Jersey courts, legislature and the Governor will not change our right to marry.

Just after only five years, the concept of marriage equality has become entrenched in our society. Businesses, insurance companies and other large entities don't want to have customers and employees married if living in one state but not if living in another. The need for consistency overrides.

The attack on marriage equality will instead be aimed to limit which marriage rights and benefits are available to same-sex couples. Arkansas and Indiana tried to exclude a same-sex spouse from being named on a birth certificate. Fortunately, even with the change of justices, the US Supreme Court specifically rebuffed those attempts and reaffirmed

Obergefell. The court held that same-sex couples are entitled to the “rights, benefits and responsibilities” of civil marriage “on the same terms and conditions as opposite sex couples.”

Another means of attack is for states, other governmental entities and courts to allow entities or persons “with deeply held religious beliefs” to discriminate against same-sex couples or to other members of our community, even if not married. Thus, a private school could be allowed to deny registration to the child of a same-sex family. Or, courts could rule that a municipal clerk can refuse on religious grounds to issue a marriage license to two people of the same gender. Or, as before the US Supreme Court right now, an adoption/child welfare agency run by Catholic Church and which receives governmental funding could be allowed to discriminate against the LGBTQ community in the placement of children.

Bottom line: Your existing marriage is safe. What marriage means and what benefits it provides are under attack. There is a campaign, mostly outside of New Jersey, to limit the benefits of marriage and to carve loopholes in state and federal anti-discrimination laws to exclude the LGBTQ community based on “sincerely held religious beliefs.”

The Good News

1) It is now much easier to obtain confirmation of parentage.

As of April 1, 2020, New Jersey has a new law which streamlines the process for a non-genetic, non-gestational parent to confirm their parental rights.

Many of you receiving this letter remember when we were working to convince judges to agree that a child could have two parents of the same gender. Back in the 1990’s, couples who sought judicial confirmation of their parental rights were required to do a full-scale home study as if adopting a child out of foster care, undergo fingerprinting and background

checks and then appear before a Superior Court judge to be examined as to their suitability to adopt their child in their intact family.

Starting in the early 2000's, when same-sex couples were allowed to obtain legal recognition of their relationship, Vital Statistics put both spouses names on the birth certificate. But in order to get the judicial confirmation of the parentage for a non-genetic, non-gestational parent, a couple still had to undergo background checks and a judicial hearing was still required.

Issuance of the birth certificate with both parents' names led many couples to believe that the birth certificate meant that their parentage was secure. **Reliance on a birth certificate is misplaced and can cause problems.**

The New Jersey Supreme Court ruled that there are only three ways one is a legal parent in New Jersey: 1) you gestate the child, 2) you contribute genetic material, or 3) you obtain an adoption or parentage order. In other words, under New Jersey law a non-genetic, non-gestational parent has no legal status as a parent without a court order. **A birth certificate does not confer parentage.**

Non-genetic, non-gestational parents found that their parentage was questioned when they applied for government benefits, like Social Security disability, for their child. Also, if a non-genetic, non-gestational parent dies without a confirmatory adoption and without a will, their child might face hurdles to be recognized as an heir.

This year's new law makes obtaining that court order much simpler. With the instigation and encouragement of Danni Newbury from the Union County LGBTQ office, I drafted the legislation. Senator Nicholas Scutari sponsored the bill and guided it through the legislature.

Now a couple who was married or in a civil union at the time of the child's birth can obtain a judgment confirming their parentage without any background checks or a hearing. The couple needs to show that their names are already on the birth certificate and that no one else has any parental rights.

With submission of those proofs, the court will issue a judicial order. That order is valuable. It is subject to full faith and credit throughout the United States. That means the same-sex parents can travel freely and move anywhere within the country and their parentage will be respected.

2) How cultural competency training has succeeded

For years now, with the support and encouragement of the New Jersey judiciary, many colleagues and I have led cultural competency training for judges, judicial staff, and other court personnel. All of that training is paying off.

There has been a sea change how judges and judicial staff treat members of the LGBTQ+ community. I see it practically every time I am in court. There is greater understanding of and respect for who we are and what our needs are.

The court amended the Code of Judicial Conduct to include prohibition of discrimination because of gender identity or expression, affectional or sexual orientation, marital status, civil union status, and domestic partnership status. Gone are the days when a judge could tell my lesbian couple clients doing a second parent adoption that they needed to establish a fund to underwrite their child's future psychological problems.

On November 18, 2020, we got further evidence that training pays off. The New Jersey Supreme Court eliminated a rule requiring two newspaper publications during a name change process. This requirement was dangerous for transgender persons who were changing their name to align with their gender identity. Because these ads are on the internet, they became a permanent record exposing trans individuals to possible discrimination and bullying throughout the remainder of their lives.

In dropping the requirement, the New Jersey Supreme Court noted “the general barriers the publication requirement ... imposes on self-represented litigants and litigants of limited economic means **in addition to the safety and privacy concerns of transgender, gender nonconforming and non-binary adults.**” (Bold added)

The Court stated that this action “will expand equal access to the court for people who are poor, self-represented and **members of the LGBTQ+ community, including transgender women of color who disproportionately continue to be targeted victims of violence throughout the nation.**” (Bold added)

We have come a long way. If you find yourself in a New Jersey courtroom, you should not fear discrimination or misunderstanding because of your gender identity or sexual orientation. If you feel you have been mistreated, there are avenues of address.

These two advances in 2020 give me optimism and hope as we start the new year.

Wishing you and your family and loved ones all the best in 2021.

Very truly yours,

Bill

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