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LEGAL FACT SHEET

NAME CHANGES OF MINORS*

In New York, "the petition to change the name of an infant may be made by a resident of the state,[1] including the infant[2] through his next friend,[3] or by either of his parents, or by his general guardian, or by the guardian of his person."[4]

Parents and Guardians

The statute clearly permits parents to petition for name changes, and in hundreds of cases, parents battle over the surnames (last names) of their children.[i]

Since the statute mentions guardians, non-parents who are guardians may also petition to change the name of children.

Next Friends

Given the definition of "next friend," non-parent caregivers could be "next friends." However, qualifying as a "next friend" is not settled law and the opportunity may rely upon the set of individual circumstances and reasons for requesting the name change. As a general rule, it may be true that the more compelling the circumstances and reasons, the higher the chances of qualifying as a "next friend."

For instance, in circumstances where children may suffer terrible social stigma by continuing to use the names of parents who have committed notorious crimes, some courts will permit a name change.[5]

Some courts excuse the father's duty to support if the child takes or maintains a different surname without the father's consent.[6]

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[1] McKinney's Civil Rights Law §60, also states: "a petition for leave to assume another name may be made *by a resident of the state* to the county court of the county or the supreme court in the county in which he resides, or, if he resides in the city of New York, either to the supreme court or to any branch of the civil court of the city of New York, in any county of the city of New York". United States citizenship is not a legal prerequisite to a successful change of name application, inasmuch as the Civil Rights Law requires only that a change of name applicant establish residency. *Matter of Novogorodskaya*, 104 Misc. 2d 1006, 429 N.Y.S.2d 387 (N.Y. City Civ. Ct. 1980). The petition may be made by form, 25 West's McKinney's Forms Civil Rights Law §60 Form 2.

[2] Many New York State statutes refer to any child under the age of eighteen as an "infant."

[3] The expression "next friend" has a definite and well established meaning, namely, "one who, without being regularly appointed guardian, acts for the benefit of an infant, or other person non *sui juris*" *Walter v. Walter*, 217 N.Y. 439, 111 N.E. 1081 (1916), and is frequently used interchangeably with "guardian *ad litem*," a related person represented by an attorney or an attorney appointed by the court to represent the legal interests of the minor or incompetent person for one action only. The words 'charges' and 'custody' are frequently used as synonymous. A next friend for an infant party has a duty to bring *240 those rights directly under the notice of the court. (5 Words & Phrases, First Series, 4797; *Leopold v. Meyer*, 10 Abb. Pr. 40.)

[4] Seminal *Whitmore v. Arkansas*, 495 U.S. 149 (1990) prescribes three tests for third party standing as "next friend" in federal court: 1) reason why cannot represent self, 2) truly dedicated to best interests, 3) significant relationship.

[5] *W. v. H.*, 103 N.J. Super 24, 26, 246 A.2d 501, 502 (1968) (father had had sexual intercourse with both daughters; children were 'pariahs' among their peers and thus forced to a nomadic existence'); *In re Calobrisi*, 7 Fam. L. Rep. (BNA) 2721 (N.Y. Sup. Ct. Sept. 21, 1981) (father a convicted rapist); *In re Yessner*, 61 Misc. 2d 174, 304 N.Y.S.2d 901 (Civ. Ct. 1969) (father choked and killed child's maternal grandfather); *In re Fein*, 51 Misc. 2d 1012, 1018, 274 N.Y.S.2d 547, 555 (Civ. Ct. 1966) (father had committed murder; children are 'entitled to emerge into life in a clean, fresh, and wholesome atmosphere, untainted by a blemished past'), Contrast, *Application of Wittlin*, 61 N.Y.S.2d 726 [change denied when divorced biological father remains fit and continues to support and have good relationship with son].

[6] *Cohen v. Schnepf*, 94 A.D.2d 783, 463 N.Y.S.2d 29 (1983).

Natural and De Facto Guardians

It appears to be unsettled whether non-parental relatives such as grandparents, aunts, uncles, siblings who have assumed caregiving responsibilities, qualify as "natural guardians."

In some states, the common law is used to establish non-parents as "de facto guardians" or "guardians de son tort" (by ones' own act) who become guardians merely by voluntarily assuming the necessary duties. A review of New York Law does not show that persons who assume parental duties (primary caregiving) are recognized as natural guardians.[7] However, given the evolving nature of the law regarding non-parent care, if the reasons for the name change seem compelling, then non-parent caregivers should consider attempting to convince a judge that they have standing as "natural" or "de facto" guardians.

Persons in Parental Relation

Designation of "person in parental relation to the child" by a parent[8] does not confer this power within the strict definition of this provision.

Court Procedure

If the petition is accepted and a court date established, then the court will decide to permit a name change using the best interests standard. Because situations are so numerous and varied, there is no statutory provision or case law which establishes any conditions for deciding when children's names should be changed. The decision rests within the sound discretion of the court in determining the best interests of children.

The only absolute prohibition is fraud, and "provided fraud was not the inspiration for the act" the petition will ordinarily be granted.[9] Parents or guardians are entitled to notice of the application for change.[10] If granted, the order must be published at least once within 60 days in a local newspaper[11] unless the court determines that publication may jeopardize the applicant's personal safety, in which case the order may be ordered sealed.[12]

The contents of the petition require[13] "the grounds of the application, the name, date of birth, place of birth, age and residence of the individual whose name is proposed to be changed and the name which he or she proposes to assume."[14]

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[7] See for example, in Arizona, *In re Harris' Guardianship*, (*Wupperman v. Lyon*) 17 Ariz. 405, 153 P. 422, (1915). *Miske v. Habay*, 1 N.J. 368, 63 A.2d 883 (1949) [A "guardian de facto" or "de son tort" is one who assumes to act as guardian without right or lawful authority, and it is immaterial whether, as in case of a de facto guardian, there is color of authority for exercise of the power.]

[8] McKinney's General Obligations Law §§5-1551 *et seq*. This act confers the power to make educational (McKinney's Education Law §§2, 3212) and certain health care decisions (McKinney's Public Health Law §§2164, 2504) on the designated person, and thus is expressly limited here.

[9] McKinney's Civil Rights Law 63, "…that the petition is true, and that there is no reasonable objection to the change of name proposed, and if the petition be to change the name of an infant, that the interests of the infant will be substantially promoted by the change, the court shall make an order authorizing the petitioner to assume the name proposed." McKinney's DRL 114 governs change of name of child to adoptive parents, and bars disclosure of biological parents' surname to adoptive parents.

[10] McKinney's Civil Rights Law §62. It must be served as "a notice of a motion upon an attorney in an action, upon (a) both parents of the infant, if they be living, unless the petition be made by one of the parents, in which case notice must be served upon the other, if he or she be living, and (b) the general guardian or guardian of the person, if there be one."

[11] McKinney's Civil Rights Law §63

[12] McKinney's Civil Rights Law §64-a

[13] McKinney's Civil Rights Law §61

[14] McKinney's Civil Rights Law §61, it must also specify "(a) whether or not the petitioner has been convicted of a crime or adjudicated a bankrupt; (b) whether or not there are any judgments or liens of record against the petitioner or actions or proceedings pending to which the petitioner is a party, and, if so, the petitioner shall give descriptive details in connection therewith sufficient to readily identify the matter referred to; (c) whether or not the petitioner is responsible for child support obligations; (d) whether or not the petitioner's child support obligations have been satisfied and are up to date; (e) the amount of a child support arrearage that currently is outstanding along with the identity of the court which issued the support order and the county child support collections unit; (f) whether or not the petitioner is responsible for spousal support obligations; (g) whether or not the petitioner's spousal support obligations have been satisfied and are up to date; and (h) the amount of spousal support arrearage that currently is outstanding along with the identity of the court which issued the support order."

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Can you change a child's name without going to court?

While the common law approves of name changes that are not ordered by a court and in the common law, actions by courts are not required to assume another name. So, a name change can be made effective through consistent usage or habit.[15]

However, this common-law right is not particularly useful to children.[16] The practical problem is that schools will request to see the child's birth certificate before registration. The child may need a court order--or at least written consent from his parents--to persuade school officials to register him under a new name. Without official blessing, his teachers will probably not use his new name, thereby foiling the child's attempt to adopt a name by habit and repute.

[15] e.g., *Eisenberg v. Strasser*, 1 Misc.3d 299, 768 N.Y.S.2d 773 (2003) [The statutory provisions enabling a person to petition for a court order changing his or her name are an alternative procedure to the one under the common law; they neither diminish nor abrogate a person's common law right to effectuate a name change.]
[16] 70 VALR 1303, Virginia Law Review, "Like Father, like Child, The rights of parents in their Childrens' Surnames." (1984)