

Family Law

Practical Guide to Name Changes

Requires more than a simple announcement

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We have all requested name changes as part of an uncontested hearing at the end of divorce litigation, but name changes can arise in various circumstances. Generally, “[a] name change may be accomplished by no formal action at all. At common law, an adult or emancipated person is free to adopt any name as long as an illegitimate reason is not at its core.” *Plank v. Plank*, 241 N.J. Super. 543, 549 (Law Div. 1990). However, officially changing one’s name, such as for the purpose of obtaining a driver’s license or Social Security card, requires more than simply announcing the use of a new name. Generally, an application for name change is governed by N.J.S.A. 2A:52-1 to -4 and Rules 4:72-1 to -4, which provide “a definitive and swift procedure for public recordation.” *In re Bacharach*, 344 N.J. Super. at 130-31. Because New Jersey law imposes certain requirements, we embarked on creating a step-by-step guide to seeking a name

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change under various circumstances.

Seeking a Name Change During a Divorce

Name change requests pursuant to a divorce are routinely granted. In fact, either party to a divorce may resume the name he or she used before the marriage or assume *any* surname. Applications for name changes pursuant to a Judgment of Divorce are governed by N.J.S.A. 2A:34-21.

A request to assume a new surname or resume a maiden name should be made in the initial pleadings. However, failure to do so does not foreclose such a request. The courts routinely grant motions, oral or written, to amend the pleadings for this purpose. N.J.S.A. 2A:34-21. In the case of *Cimiluca v. Cimiluca*, 245 N.J. Super. 149, 152 (App. Div. 1990), the Appellate Division held:

[T]he failure of a spouse to file a pleading seeking a name change authorized by N.J.S.A. 2A:34-21 should not bar a written or oral motion made with consent at the divorce hearing to amend or add pleadings to achieve that end. Such a motion should be granted unless some contrary reasons appear, other than the informality of the procedures.

However, the practitioner should note that the court held in *Holshue v. Holshue*, 265 N.J. Super. 599 (Ch. Div. 1993), that the complaint must state a cause of action to assume another name, and thus, the better practice is to plead a name change in the divorce complaint.

Before granting a request for change of surname, during the divorce proceedings, the court will usually require your client to state under oath (1) that the request is not intended for any fraudulent purpose; (2) if he/she was ever convicted of a crime and if so, the nature of the crime and the sentence imposed; and (3) whether any criminal charges are pending. See Rule 4:72.1

Post-Judgment Motion To Resume the Use of a Maiden Name

N.J.S.A. 2A:34-21 provides that the court may grant a name change request “upon or after the granting of a divorce from the bonds of matrimony.” The court in, *Olevich v. Olevich*, 258 N.J. Super. 344, 347-48 (Ch. Div. 1992), held that a divorced woman was entitled to resume her maiden name anytime following entry of judgment of divorce by way of motion and was not compelled to seek a name change under N.J.S.A. 2A:52-1. The court recognized that a person might desire to retain her married name for many legitimate reasons, including in the interests of the child(ren).

The motion to resume a maiden name

or assume a new surname should be made just as any other post-judgment motion, including a notice of motion, certification, form of order, and notice to the adversary. The client's certification should state each of the requirements listed in Rule 4:72-1, the applicant's date of birth and his/her Social Security number. Finally, the practitioner should ensure that the court puts a gold seal on the order for your client; the Department of Motor Vehicles will not accept the order without a seal.

Whether applying for the right to resume a previous name or assume a new name during the divorce or post-judgment, the practitioner should be aware of the procedure for correcting records outlined in N.J.S.A. 2A:52-4.

Requesting a Name Change for an Adult

For an adult outside of the context of a divorce seeking a name change, a verified complaint must be filed in the law division, stating the applicant's name, date of birth, Social Security number, whether or not the applicant has ever been convicted of a crime, and whether any criminal charges are pending against him or her. If any convictions or pending charges exist, the complaint must detail the criminal matter. N.J.S.A. 2A:52-1. Additionally, if the applicant has any pending criminal charges, the application must be served upon the state or county prosecuting authority responsible for prosecuting the charges; proof of service must be filed with the court. The complaint must further state whether the applicant has any unsatisfied judgments of record or suits pending against him or her. Significantly, the complaint must state that the application for name change is not being instituted for purposes of obstructing criminal prosecution, avoiding creditors or perpetrating a fraud. Finally, the complaint must detail the reasons the name change is being sought. If the applicant knowingly provides false information in his or her

application, the applicant can be found guilty of a crime of the fourth degree.

In addition to the verified complaint, a civil case information statement, a form of order fixing date of hearing and a form of final judgment must be filed. The order fixing date of hearing must provide for a hearing date and include the publication requirements.

After receipt of the order fixing date of hearing from the court, same must be published with a local newspaper designated by the court at least two weeks before the date of the hearing. After the publication, the newspaper will send an affidavit of publication that must be forwarded to the court. Likewise, the final judgment must appear in the newspaper no more than 20 days after the judgment. An affidavit of publication of the final judgment must also be filed with the court.

A certified copy of the final judgment must be sent to the Department of Treasury within 45 days of the date of the judgment and to the Registrar of Vital Statistics. The applicant should present a certified copy of the judgment to the Motor Vehicle Agency in person.

Requesting a Name Change for a Child

In addition to satisfying the above requirements, the process for seeking a name change for a child under the age of 18 has the following requirements. The complaint must identify the child's other parent, his or her residence, and the parent(s) raising the child. The certification accompanying the verified complaint is signed by the child's parent seeking the name change.

Moreover, Rule 4:72-1 provides that the complaint for a name change for a minor must state "whether the child or any party in interest in the name change application is the subject of a family action pending or concluded within the three years preceding the filing of the complaint." Under those circumstances, the name change applica-

tion will be transferred to the Family Part in the vicinage where the family action is pending or concluded. If neither the child nor a party in interest has been the subject of a Family Part action within the preceding three years, "a certification to that effect shall be appended to the complaint."

You must serve copies of the verified complaint and the order fixing date of hearing on the other parent of the minor child and to the county prosecutor if the minor has any pending charges.

Name Change Incident to Domestic Violence Matter

In *In re E.F.G.*, 398 N.J. Super. 539 (App. Div. 2008), the Appellate Division held that requiring publication of an application to change a name in the context of the domestic violence action would result in an injustice to the applicant. The Appellate Division held that "where a plaintiff has demonstrated a well-founded concern for her personal safety as a result of prior domestic abuse, and where there is otherwise strict compliance with the change of name statute and rule," that there was a compelling interest to relax the publication requirement. Likewise, the court held that there was a compelling interest to seal the records in the matter. Without the relaxation of the publication requirement and the sealing of the record, the plaintiff would be at grave risk in seeking a change of name because her abuser could locate her new name and address.

In conclusion, an application for name change is a routine and simple process through which the practitioner can guide the client. The underlying theme in all name change applications is that a court will freely grant name change requests provided that they are not sought for purposes of obstructing criminal prosecution, avoiding creditors or perpetrating a fraud. ■