



The Capital District WOMEN'S BAR ASSOCIATION

*A Chapter of the Women's Bar Association of the State of New York*

## Summer 2016 Newsletter

### *Basics of Name Changes and Recent Developments for Transgender Individuals*

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Clients come to me seeking to change their own name or that of their child for various different reasons, including protection in domestic violence situations, allowing the whole family to share the same last name after a parent remarries, transitioning from one gender to another and making the name they've been using informally their legal name (which I need to get around to doing for myself one of these days...).

When an adult client wants to change their own name, the procedure is fairly straightforward. A petition is filed with the Supreme Court requesting the name change, providing the reason for the name change and giving the court certain assurances that there is no improper motive involved such as eluding creditors. Once a judge is assigned, a proposed order is submitted, which is generally executed by the judge without any appearance being required. The final step is to publish a notice in a newspaper selected by the Court.

When a name change for a minor is involved, the petition is submitted by one or both parents. If only one parent signs the petition, the other parent must be given notice of the proceeding, except in very limited circumstances. If there is a nonconsenting parent, I generally commence the special proceeding by Order to Show Cause and ask the Court to set a schedule for opposition and reply papers to be filed and for there to be no personal appearances on the return date. The Order to Show Cause can also direct alternative service where the other parent's whereabouts are unknown. In my experience, opposition papers are generally not filed. However, if they are, a hearing is held on whether it is in the child's best interests to have the name change approved.

Over the last several years there have been many changes in name changes for transgender individuals. Although the statute never required this, it was the practice of many judges to require proof that a sex reassignment surgery ("SRS") had taken place. It is now clear that no such proof is required; a transgender individual need only comply with the statutory requirements of Civil Rights Law Article 6. See *In re Powell*, 95 A.D.3d 1631 (3d Dep't 2012); *In re Winn-Ritzenberg*, 26 Misc.3d 1 (1st Dep't App. Term 2009). Additionally, there is now support for the notion that no publication should be required when a name change is sought by a transgender individual even when there is no history of violence or direct threat of harm to the petitioner due to the pervasive violence perpetrated against individuals of the transgender community in our country. *In re E.P.L.*, 26 Misc.3d 336 (Sup. Ct., Westchester Co. Nov. 10, 2009). Avoiding publication protects the safety and privacy of transgender individuals undergoing a name change and also make the process less expensive and quicker.

A name change is not the final step for a transgender individual. An ordinary name change order does not change an individual's gender and it does not require the New York State Department of Motor Vehicles ("DMV") or the New York State Department of Health ("DOH") to reflect a gender change on that individual's identification documents. However, DOH recently made their rules more friendly to transgender individuals.

In 2015, DOH issued guidance indicating that an individual's gender designation on their birth certificate can be changed upon submission of the following items: (1) completed application for correction of birth certificate form; (2) certified copy of the current birth certificate; and either (3) a notarized affidavit from an appropriate medical professional that SRS has occurred; or (4) a notarized affidavit from an appropriate medical professional that the individual has undergone appropriate clinical treatment for a person diagnosed with Gender Dysphoria or Transsexualism. An individual can simultaneously change their name (after receiving an order via a name change proceeding) and their gender designation via this process, which generally takes about 3 months.

Similarly, in order to change your gender on your driver's license, the DMV requires the following: (1) completed application for permit, driver's license or non-driver ID card; (2) current permit, driver's license or non-driver ID; and (3) a signed statement on letterhead from an appropriate medical provider specifying that one gender is the individual's main gender. Notably, this has been the DMV's policy since 1987. The individual's name can be changed at the same time by inclusion of the name change order.

Kathleen "Casey" Copps DiPaola, Esq. of Copps DiPaola, PLLC focuses her practice in adoption law, assisted reproductive technology law(egg/sperm/embryo donation and gestational carrier/surrogacy agreements), family/matrimonial law, real estate, not-for-profit/for-profit/religious corporation formation and operations, estate planning, probate, employment law and name changes.