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By any other name

BY SHAY ELBAUM

The use of names to refer to individuals is probably as old as language itself, but many features of naming in the United States are much newer. For the most part, our naming laws and norms derive from England, where the use of surnames, for example, can be traced back to the Norman conquest and did not become a common practice until the 13th or 14th century.¹ The idea of a surname as a *family* name, permanent and hereditary, is even newer.²

The common law method of changing one's name — simply using a different name, for non-fraudulent purposes — is still valid in most states, including Michigan.³ However, the practical impact of a common law name change is limited since it may not be sufficient for a name change on identification documents. The Social Security Administration, for example, will not change the name associated with a Social Security number based on evidence of a common law name change.⁴

This column discusses Michigan's name change laws and the requirements for a name change on one's driver's license, Social Security card, and passport. It focuses on two categories of name change and the issues they may present: name changes upon marriage and name changes by transgender or non-binary people.

MICHIGAN LAW

Chapter 711 of the Michigan Probate Code contains the statutory procedures for changing a person's name. Under MCL 711.1(1), an adult seeking to change their name must petition the family division of the county's circuit court "showing a sufficient reason for the proposed change and that the change is not sought with fraudulent intent." The court will hold a hearing and — hopefully — issue an order changing the petitioner's name.

The petitioner must have been a resident of the county for one year or more and must publish a notice of the proceedings that contains their current and proposed names.⁵ The publication requirement

may be waived and the record of the proceeding kept confidential for good cause, including evidence that publication could put the petitioner or someone else in physical danger.⁶

An individual who is 22 years old or above must have fingerprints taken and forwarded to the state police, who will report any pending criminal charges or convictions to the court.⁷ A criminal record does not preclude a name change but it does give rise to a rebuttable presumption of fraudulent intent.⁸

The process is similar for minors except that the petition must be signed by both parents, with some exceptions.⁹ However, courts have allowed minors to change their names without the consent of one parent in some instances by treating the petition as one for recognition of a common law name change.¹⁰ A minor 14 years old or above must give written consent to the change.¹¹ The court may consult and consider the wishes of a minor under 14 years old.¹²

There are fees associated with each of these steps. Fees vary by county, but petitioners pay \$280 on average before the hearing for the initial filing, background check, and publication, then an

AT A GLANCE

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additional \$10 for the order itself and any copies.¹³ The Michigan State University webpage cited in the preceding endnote is an excellent practical guide to the statutory name change process.

MARRIAGE

A marriage certificate alone can be evidence of a name change, or at least a surname change. The Michigan Department of State, the Social Security Administration, and the U.S. Department of State — and State Bar of Michigan — all accept marriage certificates as evidence of a name change.¹⁴

However, this begs the question: Evidence of what changes, and for whom? Same-sex couples, men seeking to adopt their wives' surnames or a hyphenated name, and anyone adopting an entirely new name on marriage may face obstacles using a marriage certificate to prove the name change. Unlike some states, Michigan's marriage license does not include a space for either spouse to indicate if they would like to change their name.¹⁵ I have found no official policy describing which name changes can currently be proven with a marriage certificate at the Michigan Department of State. Anecdotally, I am aware of men whose marriage certificates were accepted as proof of a name change, and other men whose certificates were not. This is an area where people may encounter what Elizabeth Emens has called desk-clerk law: "Desk-clerk law is what the person at the desk tells you the law is[.] In this informal way, desk clerks effectively make the rules for many citizens."¹⁶

The Social Security Administration and U.S. Department of State have much clearer policies for name changes on Social Security cards and passports. For both, a marriage certificate can serve as proof of a name change by a spouse of any gender as long as the new name can be derived from the surnames on the certificate.¹⁷ There are some minor differences between the policies which could result in discrepancies between a Social Security card and passport, but both policies are fairly broad.

TRANSGENDER AND NON-BINARY PEOPLE

For many transgender and non-binary people, choosing a new name is an immensely meaningful event and an important step in moving through the world as the person they know themselves to be. Having a name that aligns with one's gender — and having that name used by others — is a source of self-actualization and empowerment; conversely, the use of a birth name that does not align with one's gender can cause significant distress. Moreover, the presence of an incorrect name on identification documents can "out" someone, revealing private and sensitive information and risking discrimination or violence.

The legal process for changing one's name is no different for transgender and non-binary people than for anyone else. They may, however, have a well-founded fear of judicial bias.¹⁹ In a 2019 article, Milo Primeaux describes his own difficult name change process including the judge's "barrage of increasingly invasive, dehumanizing, and irrelevant questions."²⁰ Now, as an attorney, Primeaux helps his transgender clients have better name change experiences and offers some suggestions for attorneys in his article.

First, simply demonstrating awareness of these issues and empathy for transgender clients' concerns can build trust and make the process more comfortable. Primeaux suggests reviewing your intake forms and client management systems to make sure they're inclusive of transgender and non-binary clients. He also urges attorneys to take on these matters at affordable rates. For the attorney, the process is usually formulaic and not particularly time consuming; for the transgender client, the process may be confusing, intimidating, and prohibitively expensive. It may also be "life-changing and life-saving."²¹

CONCLUSION

There are numerous other reasons one might wish to change their name; in particular, this column does not discuss immigration-related name changes or name changes in a divorce.²² There are also numerous other government agencies and private entities one must contact to really effectuate the change.²³ The legal processes discussed here, however, are essential for providing proof of the name change in most cases and the occasion of a legal name change can have great personal significance.



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ENDNOTES

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2. *In the Name of the Father* at 63-64.
3. Baker & Green, *There is No Such Thing As a 'Legal Name'*, 53 Columbia Hum Rights L Rev 129, 140 (2021); *Rappleve v Rappleve*, 183 Mich App 396, 398-99; 454 NW2d 231 (1990); and *Piotrowski v Piotrowski*, 71 Mich App 213, 216-17; 247 NW2d 354 (1976).
4. Social Security Admin, *Evidence Requirements to Process a Name Change on the SSN*, RM 10212.015, POMS (2012) <<https://secure.ssa.gov/poms.nsf/>

- Inx/0110212015> [<https://perma.cc/J2VW-WVSH>]. All websites cited in this article were accessed January 11, 2023.
5. MCL 711.1(1) and MCR 3.613.
 6. MCL 711.3.
 7. MCL 711.1(2).
 8. *Id.* For more on what evidence suffices to rebut the presumption, compare *In re Pearson*, unpublished per curiam opinion of the Court of Appeals, issued March 25, 2021 (Docket No 352377) with *In re Morgan*, unpublished per curiam opinion of the Court of Appeals, issued April 14, 2011 (Docket No 296678).
 9. MCL 711.1(5) & (7).
 10. *E.g.*, *In re Warshefski*, 331 Mich App 83; 951 NW2d 90 (2020); *Kratzer v Lambright*, unpublished per curiam opinion of the Court of Appeals, issued May 20, 2003 (Docket No 235336); and *Rappleye v Rappleye*.
 11. MCL 711.1(6).
 12. *Id.*
 13. MCL 711.2 and *Legal Name and Gender Marker Changes*, The Gender and Sexuality Campus Ctr, Mich State Univ <<https://gsc.msu.edu/trans-msu/legal-name-and-gender-marker-changes.html>> [<https://perma.cc/SV2C-XBNP>].
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