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February, 2014

## Changing Your Name in New York—Part III

Gerald Lebovits



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Queens County Bar Association • Vol 77, No 2 • Feb/March 2014

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## Changing Your Name in New York:

*A Guide for Attorneys and the Self-Represented — Part III*

*By Gerald Lebovits and Taneem Kabir*

Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

This third part of our three-part article on New York's name change laws concludes with where to file, in which court to file, and what happens after you file name-change petitions as well as publication requirements.

### IV. Where to File

If you are a New York City resident, you may file your petition form and supporting evidence in the clerk's office in the New York City Civil Court or in the Supreme Court.

Inside New York City, you may file in any county (borough) of the New York City Civil Court if you are a New York City resident. But if you file in a county in Civil Court other than the one in which you reside, you must publish your name-change notice in a newspaper with City-wide distribution and not in a local newspaper.

New York City Civil Court petitions go to the court's Special Term for judicial approval.

You may file your petition and supporting evidence in the Supreme Court of the county in which you reside, whether you live inside or outside New York City.<sup>1</sup> As we explained above, Civil Rights Law § 60 authorizes name-change petitioners to file petitions in County Court — a court outside New York City that hears felony cases — but every County Court we contacted directed us to the county Supreme Court to file a name-change petition. Bring an extra copy of all your materials with you in case the court clerk needs extras.



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# Changing Your Name in New York: A Guide for Attorneys and the Self-Represented – Part III By Gerald Lebovits and Taneem Kabir

Filed in: Uncategorized

Catherine Zito

January 28, 2014

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Gerald Lebovits is a New York City Civil Court judge and an adjunct professor at Columbia, Fordham, and NYU law schools. Taneem Kabir, an associate attorney at DeToffol & Associates, is admitted to practice in New Jersey and before the United States Patent and Trademark Office. For their research help on all three parts of this article, the authors thank law students Aviva S. Kravitz and Todd M. Neuhaus from Cardozo School of Law and Natalie J. Puzio, an undergraduate at Villanova University.

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## **V. What Happens After You File**

After you file your petition, the court clerk will notify you of a name-change-hearing date — usually within 90 days of your filing date. At that hearing, the court will examine your petition, including the reasons you offer for changing your name.<sup>2</sup> At this hearing, the judge might ask you a few questions about your name change. Answer candidly. If the judge rejects your name change request, review the judge's explanation, which will be articulated in writing.

A judge might reject your name-change petition on a variety of grounds, such as if your name change will result in misrepresentation or fraud. In *Matter of B.*, the court rejected a divorcee's name-change petition to change her name to match the last name of her lover, a married man, because doing so would condone her ongoing act of adultery.<sup>3</sup>

Another reason for rejection is if your name will cause confusion. In *Matter of Greenfield*, the petitioner wanted to change his Irish-sounding name (Kelly), which he had petitioned to be changed from "Greenfield," his earlier Jewish-sounding name, seven years earlier.<sup>4</sup> The court did not allow him to change his name yet again to "Anders," a Protestant-sounding name, just so he could travel to the Middle East on vacation.

If you are a transgendered individual and you want to change your name to correspond with the gender with which you identify, you are not required to present medical evidence to support your proposed name change.

New York name-change law has progressed significantly in the last twenty years. In 1992, in *Matter of Anonymous*, the court denied the petition to change a man's name from an obviously male name to an obviously female name merely "to avoid embarrassing situations due to [his] sexual preference and physical well being" because the petitioner did not corroborate his claim by competent medical and psychological evaluation, including whether he was a transvestite or transsexual and, if he was a transsexual, whether he had undergone a sex-change operation.<sup>5</sup>

In 1995, in *Matter of Rivera*, the court granted the petitioner's name change from a male-gendered name to a female-gendered name even though there was no claim that he had undergone a sex-change operation.<sup>6</sup> But the court granted his petition on condition that he not use or rely on his name-change court order as proof that his gender had been changed anatomically where the prevailing psychiatric evaluation was that he was a "transsexual whose behavior, mannerisms, and appearance" were feminine and that he was "confident about his sexuality and choice of female gender."



Appellate authority from 2009 now holds that there is no “additional requirement that a transgendered petitioner present medical substantiation for the desired name change.”<sup>7</sup> In granting the petitioner’s name-change application, the Appellate Term, First Department, in *Matter of Winn-Ritzenberg* added that it did not need to “address the separate legal issue of whether petitioner has changed gender for legal purposes.”<sup>8</sup>

Sometimes petitioners’ wishes to change their names overlap with other well-recognized rights. In *Matter of Nawadiuko*, a family petitioned to change its last name from *Nwadiuko* to “ChristIsKing.” The court denied the petitioners’ name-change application, reasoning that although the petitioners’ proposed name “has [a] personal religious meaning to them,” *ChristIsKing* “would require third parties to make a religious statement when just calling petitioners’ names.”<sup>9</sup>

On the other hand, the Appellate Division, Third Department, in *Matter of Madison*, reversed the denial of an inmate’s petition to change his name to *Diallo Rafik Asar Madison* in compliance with his newfound Islamic faith.<sup>10</sup>

If you are thinking about changing your name to a single name, you will be disappointed to learn that doing so is unlawful. In *Matter of Douglas*, the court denied the petitioner’s request to change his name to “Arindam” because of his contact with the teachings of a spiritual and philosophical leader in India. The court found that “judicial approval of the use of a single name would be a retrogression to antiquity, cause havoc and chaos” in properly identifying and locating persons and official records, and “lead to all kinds of complications on the economy,” which depends upon being able to track down debtors.<sup>11</sup>

Your name-change petition may not be based on an “unworthy motive,” and your new name may not be “bizarre, unduly lengthy, ridiculous or offensive to common decency and good taste.”<sup>12</sup> In *Matter of Jama*, a 1966 case perhaps no longer in keeping with 2013 judicial sensibilities, the petitioner tried to add “von” before his last name to reflect his German heritage, but the court denounced this as an un-American desire to affiliate himself with people who adopted the philosophies of a “monstrosity and his cohorts.”<sup>13</sup> The name “von” was, according to the court, used among German nobility, so the petitioner’s using it in New York might also have resulted in confusion about whether the petitioner had a title he did not have.<sup>14</sup>

If the court rejects your name change petition, you can still ask everyone who interacts with you to call you by your desired name. (E.g., “My legal name is Francis, but please call me ‘Frank.’”<sup>15</sup>) Unless you change your name under the common law, however, you must continue to use your legal name on all legal documents, contracts, and applications.

## **VI. Publication Requirement**

A court that approves your name change will issue a written order to you within 60 days of approval. Sometimes the court will sign the order right on the spot at the name-change hearing. This order will direct you to file the order with the court clerk either in the county in which you live or in a county the ordering court decides. This order will also direct you to publish your new name in at least one local newspaper the judge chooses.<sup>16</sup> Some courts, such as the Bronx County Civil Court, require you to publish in two newspapers.<sup>17</sup> All the other counties in New York City require

publication in one newspaper only.

You must then take this order to the newspaper(s) to ask it to publish your new name in compliance with the judge's order and pay the newspaper's publishing fee, a fee that will depend on the newspaper.<sup>18</sup> As of July 2013, the New York Times' fee is \$168. The Bronx Free Press, on the other hand, charges \$95. The petitioner is responsible for the cost of this publication. You must publish the name change within 60 days of the date of the order.<sup>19</sup> The following is an example of a name-change publication notice:

Notice is hereby given that an order entered by the Civil Court, Bronx County, on May \_\_\_\_ 2013, Index #\_\_\_\_\_ - 13/BX, a copy of which may be examined at the Office of the Clerk, located at 851 Grand Concourse, Bronx, NY 10451, grants me (us) the right to:

Assume the name of (First) Todd (Middle) Michael (Last) Oldhaus.

My present name is (First) Todd (Middle) Michael (Last) Neuhaus.

My present address is 1234 Poland Spring Blvd., Apt. 4L, Bronx, NY 10463.

My place of birth is Bronx, NY.

My date of birth is April 25, 1980.

Once you receive the court order, you will also want to notify the Department of Motor Vehicles, the U.S. Citizenship and Immigration Services, Social Security Administration, and schools of your name change.

The newspaper that publishes your new name will give you an Affidavit of Publication. Within 90 days of your new name's being published in the local newspaper, you must then file, in the same court that issued your name change order, the Affidavit of Publication along with the original name-change order. The court clerk of that court will then verify that you have complied with the name-change order by certifying it.<sup>20</sup> If you are a felon under section II(b) above, the court clerk will mail by first-class mail a copy of this order to the New York State Division of Criminal Justice Services in Albany.<sup>21</sup> If you have any current court-ordered support obligations, the court clerk may, in the clerk's discretion, also mail by first-class a copy of this order to that court to notify the appropriate agencies,<sup>22</sup> such as the New York City Division of Child Support Enforcement (DCSE) for child support or the New York City Human Resources Administration (HRA) for spousal support.

You may then purchase from the court certified copies of your name change order to keep for your records.

## **VII. In Which Court You File a Name-Change Petition**

There is a general filing fee for any court in which you file. For New York City residents, who have the option to petition either Civil Court or Supreme Court, it is both faster and less expensive to petition Civil Court than to petition Supreme Court.

To obtain an index number for your petition, the New York City Civil Court charges \$65.00, while the New York State Supreme Court charges \$210.00. Supreme Court also requires a Request for Judicial Intervention (RJI) form with the name-change petition.<sup>23</sup> Supreme Court does not charge extra for an RJI in connection with a name-change petition.

Courts accept only cash, money orders, or certified checks.

If you cannot afford these amounts, you may request a fee-waiver application, also known as a Poor Person Affidavit, officially called an "Affidavit in Support of Application to Proceed as a Poor Person." In the affidavit, you must state the action or proceeding for which you are submitting the fee-waiver form (e.g., name-change petition), where you reside, your income, the value of your property, any "extraordinary out-of-pocket expenses," a list of people you financially support, and any other fact relevant in determining your ability to pay the court fees.<sup>24</sup> Keep the receipt of your payment with you, and write on your petition the index number that the clerk printed on your receipt.<sup>25</sup>

This petition for poor person's relief is a separate petition<sup>26</sup> that might take a few extra days to process before you may proceed with your name change.

For cases of parents petitioning to change their child's name, the New York State Family Court inside and outside New York City is empowered to change a child's surname, but only if a paternity petition for that child is pending.<sup>27</sup> Once paternity is established, the Family Court in New York City will send the filiation order, which states who the child's father is, to the the New York City Department of Health and Mental Hygiene (DOHMH).<sup>28</sup> DOHMH then processes the filiation order and sends it back to Family Court. If both parents consent, Family Court will have both parents sign the name-change form, and Family Court will forward the completed name-change form to DOHMH. About 10 weeks later, the parents will receive a birth certificate with the new surname. Family Court does not charge a fee in connection with a name change during a paternity proceeding.

If you have a problem with your birth certificate, you must correct the certificate before you petition in Civil Court. Civil Court does not have the jurisdiction to correct a birth certificate. To correct a birth certificate, you may petition Supreme Court. But often there are other ways to correct your birth certificate without petitioning Supreme Court.<sup>29</sup>

## **VII. Conclusion**

Changing your name in the State of New York can be a challenging task. Although the common-law method provides a relatively straightforward way to change your name, there are numerous reasons why you might still want and need to seek court approval by filing a petition. We hope that this article will help you change your name or the name of a loved one — and that you prefer a good name to great riches.

- <sup>1</sup>. See Sylvia Rivera Law Project, How to Legally Change Your Name in New York City, 2013, <http://srlp.org/resources/namechange/> (last visited July 17, 2013); N.Y. City Civ. Ct. — Name Change Law, <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml> (last visited July 17, 2013); Name Changes, <http://www.nycourts.gov/courthelp/namechangeinfo.html> (last visited July 17, 2013).
- <sup>2</sup>. Matter of Sakaris, 160 Misc. 2d 657, 661, 610 N.Y.S.2d 1007, 1010 (Civ. Ct. Richmond County 1993) (citing Matter of Douglas, 60 Misc. 2d 1057, 1059, 304 N.Y.S.2d 558, 561 (Sup. Ct. N.Y. County 1969).
- <sup>3</sup>. Matter of B., 81 Misc. 2d 284, 286, 366 N.Y.S.2d 98, 100 (Wayne County Ct. 1975).
- <sup>4</sup>. Matter of Greenfield, 66 Misc. 2d 733, 734, 322 N.Y.S.2d 276, 277 (Civ. Ct. N.Y. County 1970).



5. Matter of Anonymous, 155 Misc. 2d 241, 242, 587 N.Y.S.2d 548, 548 (Civ. Ct. Queens County 1992).
6. Matter of Rivera, 165 Misc. 2d 307, 309-12, 627 N.Y.S.2d 241, 242-45 (Civ. Ct. Bronx County 1995).
7. Matter of Winn-Ritzenberg, 26 Misc. 3d 1, 3, 891 N.Y.S.2d 220, 221 (1st Dep't 2009) ("Apart from the prevention of fraud or interference with the rights of others, there is no reason — and no legal basis — for courts to appoint themselves the guardians of orthodoxy in such matters.") (quoting Matter of Guido, 8 Misc. 3d 825, 828, 771 N.Y.S.2d 789, 791 (Civ. Ct. N.Y. County 2003)).
8. Id.
9. Matter of Nawadiuko, 37 Misc. 3d 1207(A), 2012 N.Y. Slip Op. 51931(U), \*4 (Civ. Ct. Richmond County 2012).
10. Matter of Madison, 261 A.D.2d 738, 738-39, 689 N.Y.S.2d 732, 733 (3d Dep't 1999) ("[T]he Attorney-General has submitted a letter to this court indicating that the Department of Correctional Services does not oppose petitioner's application to change his name. Accordingly, in the absence of a 'demonstrable reason not to do so', the petition should be granted.").
11. See Douglas, 60 Misc. 2d at 1058-59, 304 N.Y.S.2d at 560-61.
12. See Kushner, *supra* note 3 of Part I of this article, at 314–18 & 332 for the "substantial reason" standard.
13. Matter of Jama, 51 Misc. 2d 9, 9, 272 N.Y.S.2d 677, 677 (Civ. Ct. N.Y. County 1966).
14. Id. at 10, 272 N.Y.S.2d at 678.
15. See Matter of Di Masi, N.Y.L.J., May 9, 2000, at 33, col. 1 (Civ. Ct. Richmond County) (denying father's petition to change son's name from Francis to Frank because father did not "support his petition with competent psychological affidavits as to the emotional harm" his son suffered from his androgynous name, but noting that because son maintained his "common-law right to use whatever name he chooses, there is nothing to prevent him from calling himself Frank and insisting that others do so."); see also Gersh Kuntzman, Judge Nixes Teen's "Frank" Appeal, N.Y. Post, May 2000.
16. N.Y. Civ. Rights Law § 63, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec64> (last visited July 17, 2013).
17. N.Y. County Law § 907 requires most notices published in the Bronx to be published "in at least two [Bronx] newspapers."
18. N.Y. CourtHelp, Name Change DIY Forms, <http://www.nycourts.gov/courthelp/namechangeinfo.html#Q4>.
19. N.Y. Courts, Self-Help Ctr., Procedures for Adult Name Change Petition, [http://www.nycourts.gov/courts/6jd/forms/SRForms/name\\_change-adultproced.pdf](http://www.nycourts.gov/courts/6jd/forms/SRForms/name_change-adultproced.pdf) (last visited July 17, 2013).
20. Id.
21. N.Y. Civ. Rights Law § 64, available at <http://www.nycourts.gov/courts/nyc/civil/nc60.shtml#sec64> (last visited July 17, 2013).
22. Id.
23. N.Y. CourtHelp, Name Changes, <http://www.nycourts.gov/courthelp/namechangeinfo.html> (last visited July 17, 2013); N.Y. Courts, Self-Help Ctr., Procedures for Adult Name Change Petition, [http://www.nycourts.gov/courts/6jd/forms/SRForms/name\\_change-adultproced.pdf](http://www.nycourts.gov/courts/6jd/forms/SRForms/name_change-adultproced.pdf) (last visited July 17, 2013).
24. Affidavit in Support of Application to Proceed as a Poor Person, [http://www.nycourts.gov/courts/6jd/forms/SRForms/ifp\\_aff.pdf](http://www.nycourts.gov/courts/6jd/forms/SRForms/ifp_aff.pdf) last visited July 17, 2013).

25. N.Y. Courts Self-Help Ctr., Procedures for Adult Name Change Petition, [http://www.nycourts.gov/courts/6jd/forms/SRForms/name\\_change-adultproced.pdf](http://www.nycourts.gov/courts/6jd/forms/SRForms/name_change-adultproced.pdf) (last visited July 17, 2013).
26. Id.
27. Matter of Maria E. v. Anthony E., 125 Misc. 2d 933, 935, 481 N.Y.S.2d 227, 228 (Fam. Ct. Bronx County 1984).
28. Changing Your Name or the Name of Your Child in Court, Legal Information for Families Today, 2009, [http://www.liftonline.org/guides/pdf/guide\\_102.pdf](http://www.liftonline.org/guides/pdf/guide_102.pdf) (last visited July 13, 2013).
29. See N.Y.C. Dep't of Health & Mental Hygiene, Correcting a Birth Certificate, <http://www.nyc.gov/html/doh/html/services/vr-birth-correct.shtml> (last visited July 17, 2013); N.Y. CourtHelp, Sup. Ct. Adult Name Change Petition Program, Correcting a Birth Certificate, <http://www.nycourts.gov/courthelp/diy/nameChange.html> (last visited July, 17, 2013).

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