

Change of a Minor Child's Name in Minnesota

The requirements for changing the name of a minor child in Minnesota are not only governed by certain statutes, but also by judicial case law decisions.

In addition, there is considerable variety in the manner in which the various counties interpret the statutory and judicial requirements.

Therefore, it is not possible to identify one set of uniform procedures for changing the name of minor child which would be applicable in all Minnesota counties - notwithstanding the ready availability of "*standard documents*".

M.S. § 259.11

Minnesota Statutes (M.S.), § 259.11(a) identifies the general requirements for the granting of a name change:

Upon meeting the requirements of section 259.10, the court shall grant the application unless:

- (1) *it finds that there is an intent to defraud or mislead;*
 - (2) *section 259.13 prohibits granting the name change; - (due to a felony conviction of the party desiring the name change);*
- or*
- (3) *in the case of the change of a minor child's name, the court finds that such name change is not in the best interests of the child.*

The Applicant will have to demonstrate to the court that the desired name change **is in the minor child's best interests** - which is by definition, a "*facts and circumstances*" test.

Judicial Case Law

In determining the minor child's best interests, Minnesota courts have been directed to consider:

- ◆ **the effect of the change** on the preservation and development of the child's relationship with his or her parent,
 - ◆ **the length of time** the child has borne a given name,
 - ◆ **the degree of community respect** associated with the present and proposed surname,
- and
- ◆ the difficulties, harassment, or embarrassment the child may experience from bearing the **present or proposed surname**.

M.S. § 259.10

M.S. § 259.10, Subd. 1 identifies the procedural requirements for the granting of a name change, which include the following:

*A person who shall have **resided in this state for six months***

may apply to the district court

in the county where the person resides

to change

- ◆ *the person's name,*
- ◆ *the names of **minor children**, if any, . . .*

The above provisions do not specifically contemplate the situation where a parent only wants to change the name of a minor child.

Nevertheless, the above provisions may be understood to mean that:

- the minor child must have resided in Minnesota for six months before application can be filed to change the child's name,
and
- any application by a parent to change a minor's name must be brought in the county where the minor resides.

(i) Address of the Minor Child and Applicant

Normally, an Application for a name change will identify the addresses of both:

- the minor child,
and
- the Applicant-parent,

even though the disclosure of such addresses in the Application is not required by the statute.

All information in a court's file with respect to a name change Application will be accessible to the public, unless the court determines that the name change is made in connection with participation in a **victim or witness protection program**.

However, under certain circumstances, the address of the minor child and the Applicant-parent can also be withheld from the public court record if the Applicant-parent is represented by legal counsel.

(ii) Identity of the Applicant

M.S. §259.10, Subd. 1 identifies the persons who may file an application for the change of a minor's name, by providing as follows:

*If the person be a minor,
the application shall be made by the **person's guardian or next of kin.***

A parent is generally understood to be a minor's natural guardian, and next of kin.

However, the Applicant may need to prove to the court that he or she is in fact the parent of the minor child.

Therefore, the Applicant should be prepared to present to the judge a certified copy of the minor child's birth certificate.

(iii) Notice to the Non-applicant Parent

M.S. § 259.10 states that no minor child's name may be changed without both parents **having notice of** the pending application of change of name, whenever practicable.

Therefore, the Applicant will be required to show proof that the non-applicant parent has been notified of the Application for a Name Change of a Minor, in some legal manner.

(iv) Notification by Certified Mail

Typically, notice is provided to the non-applicant parent by:

- ♦ **sending a certified letter** (return receipt requested) to such parent indicating the date, time, place, and purpose of the hearing,

and

- ♦ bringing the **return receipt card signed by the non-applicant parent** to the court hearing, together with a copy of the letter, as proof that the non-applicant parent received notice of the name change proceeding.

(v) Notification by Other Means

However, if the non-applicant parent will not sign the return receipt card, or if the address of the non-applicant parent is unknown, notification to such parent of the hearing must be accomplished by other means before the hearing can take place, pursuant to the court's order for either:

- ♦ **personal service** of the notice upon the non-applicant parent - which can be arranged through the sheriff's office - to serve the non-applicant parent at his or her residence or place of employment,

or

- ♦ **publication** thereof.

The Applicant must provide the court with an Affidavit of Service if personal service of the Notice of Hearing is made on the non-applicant parent.

Applicant's Affidavit

In order to request published notice in lieu of personal service, the Applicant must submit a notarized **Affidavit** to the court - together with the **Application for a Name Change**:

- ♦ identifying that the Applicant does not have knowledge of a current address for the non-applicant parent,
 - ♦ identifying the last contact that the Applicant had with the non-applicant parent,
 - ♦ indicating that the applicant is unaware of the whereabouts of the non-applicant parent,
- and
- ♦ identifying the efforts that have made to contact the non-applicant parent.

Based upon the contents of the Affidavit, the judge may order the notice of the hearing to be provided to the non-applicant parent by **publication** of a **Notice of Hearing by Publication** (Minor Name Change) in a legal newspaper in the county of the non-applicant parent's last known residence, which would be at the Applicant's expense.

If notice by publication is ordered by the court, it is the Applicant's responsibility to:

- ♦ make arrangements for such publication - including drafting the form of the notice,
- and
- ♦ file the Affidavit of Publication with the Court Administrator's office prior to the scheduled hearing date.

However, there is no "standard" or "pre-approved" form for the **Notice of Hearing to Change the Name of a Minor**, and a variety of formats have been used.

Therefore, the judge will need to make a determination that the **Notice of Hearing to Change the Name of a Minor** the Applicant has published is legally sufficient.

HEARING REQUIREMENTS

Presence of the Minor

M.S. § 259.10 appears to require that the minor be present at the hearing.

However, some of the district court web sites identify that only the attendance of a minor over the age of 14 is required at the hearing.

Presence of Witnesses

The applicant must bring two adult witnesses to the hearing:

- ♦ who have known the minor for at least one year,

and

- ♦ who can testify to the minor's identity.

M.S. § 259.10 does not prohibit such witnesses from being related to the minor, and rules identified on the **Hennepin County** district court's web site specifically indicate that such witnesses may be relatives of the minor.

However, the district court's web site for **Anoka County** specifically identifies that only one witness may be related to the minor child.

Real Property Owned By the Minor

If the minor child owns any real property in Minnesota, the Applicant will need to identify all such interests on the Application by the legal description of the property.

Criminal - Felonies

M.S. § 259.11(a) prohibits the granting of a name change if the party desiring a name change has been convicted of a felony.

Criminal Background Check

Minn. Stat. § 259.11 requires the Court to determine whether **any person seeking to have their name changed** has a criminal history in Minnesota or any other state.

Therefore, Courts may require that **both:**

- ♦ **the minor who is 14 years of age or older,**

and

- ♦ **the parent**

sign a Criminal History Check Release form.

However, the instructions to the Criminal History Check Release form identifies that children **10 years of age and older** must undergo a Criminal History Check.

It does not appear that the parent of a minor has to undergo a criminal background check, just authorize a criminal background check for any minor over the age of 14.

Required Parties and Witnesses

Both the minor child and the Applicant will have to be present at the hearing, and the Applicant will have to provide two additional adult witnesses who have known the minor child for at least one year.

Witness Testimony

In order to allow the judge to sign the **Order Granting a Name Change of a Minor**, the Applicant and the two witnesses will have to provide certain in-court testimony which evidences that the name change is in the best interest of the minor child.

In order to survive any appeal, the Court's **Order Granting a Name Change of a Minor** must contain certain "findings" which establish that the name change is in the best interest of the minor child.

The Applicant will generally be required to provide the court with a proposed **Order Granting a Name Change of a Minor** which contains the necessary "findings".

Changing the Minor Child's Birth Certificate

Once the **Order Granting a Name Change of a Minor** has been signed by the judge, a certified copy of the proposed **Order Granting a Name Change of a Minor** can be provided to the Minnesota Department of Health, together with:

- an "**Application to Amend a Birth Record**",
- and
- the required \$40 fee,

in order to change the official birth certificate of the minor child to identify the new name.

The **Application to Amend a Birth Record** must be signed by the Applicant before a notary public.

Certified Copies of the Minor Child's Birth Certificate

Once the changes to the original birth certificate have been made, the Applicant will likely want to obtain one or more certified copies of the revised birth certificate.

That will require submitting a different form and paying a \$26.00 fee for each certified copy.

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