#### **BUTLER COUNTY PROBATE COURT**

**Procedure For: NAME CHANGES** 

Date Last Reviewed: 1/28/2011

## **Filing Requirements**

Adult files an application in the probate court of the county in which the person resides.

- For a minor, the parent, legal guardian or guardian ad litem files the application.
- The adult applicant or the minor child must have resided in Butler County for 1 year or more immediately prior to the date the application is filed.
- Applicant must file Form 21.5 Notice of Hearing on Change of Name. The applicant will be given a hearing date when the application is filed (Front Room TIOE).

# **Applicant's Responsibilities**

### > PUBLICATION

An announcement to "all interested persons" of the date and time of the hearing must be published in a newspaper of general circulation at least 30 days prior to the date of the hearing.

Newspapers of general circulation are: Hamilton Journal News, Middletown Journal, Oxford Press, Cincinnati Enquirer. The Supreme Court has held that a weekly newspaper is not a newspaper of "general circulation."<sup>1</sup>

The newspaper will supply the applicant with an "Affidavit of Publication" which is brought to the hearing. Cutting the announcement out of the newspaper is not sufficient.

Noncustodian parent may be notified by publication if:

Custodial parent testified that "reasonable diligence" has been exercised to locate noncustodial parent. Minimal efforts do not satisfy the reasonable diligence standard.

<sup>&</sup>lt;sup>1</sup> Record Publishing Co. v. Kainrad (1990), 49 Ohio St.3d 296, 301, 551 N.E.2d 1286.

Reasonable diligence includes: taking steps than a prudent individual would expect to be successful in locating an address – checking telephone records, auto title, property records, talking to neighbors or family members, Facebook, internet search.<sup>2</sup>

Publication to noncustodial parent must include a notice to "all interested persons" and noncustodial parent's name and last known address.<sup>3</sup>

#### ➤ CONSENT

Consent of both living legal parents is required in a minor name change.

Notice of the hearing may be given to a nonconsenting parent by certified mail, return receipt requested. Notice shall be given to a known or putative parent.

### JUDGMENT ENTRY

The applicant must bring a typrwritten and completed judgment entry to the hearing.

### BIRTH RECORD AMENDMENT

After the hearing the applicant mails a certified copy of the judgment entry to the Bureau of Vital Statistics, 246 North High Street, P. O. Box 15098, Columbus, OH 43215-0098.

All legal changes are attachments to the existing birth certificate. When the applicant requests a copy of the birth certificate, she will receive a one page computer generated birth abstract showing the name change. This is a legal document certifying the change of name and will be accepted as such by al lagencies, such as passport office, social security, etc.

## **Judicial Officer Findings**

### HEARING

Residency requirement met – Court has jurisdiction.

Consents filed or service otherwise perfected.

Reasonable and proper cause exists to grant the name change.<sup>5</sup>

<sup>&</sup>lt;sup>2</sup> Civ. R. 4.4(A); <u>First Bank of Marietta v. Cline</u> (1984), 12 Ohio St.3d 317, 318, 466 N.E.2d 567, citing <u>Brooks v. Rollins</u> (1984), 9 Ohio St.3c 8, 457 N.E.2d 1158; and <u>Sizemore v. Smith</u> (1983), 6 Ohio St.3d 330, 453 N.E.2d 632.

<sup>&</sup>lt;sup>3</sup> In the Matter of Hayden Frederic Randolph, 2005 WL 280832 (Ohio App. 11 Dist.)

<sup>&</sup>lt;sup>4</sup> R.C. 3705.13

#### CONTESTED APPLICATIONS

The trial court considers 8 factors and applies the facts of each case to that law. The factors are:

- 1. The effect of the change on the preservation and development of the child's relationship with each parent.
- 2. The identification of the child as part of a family unit.
- 3. The length of time that the child has used a surname.
- 4. The preference of the child if the child is of sufficient maturity to express a meaningful preference.
- 5. Whether the child's surname is different from the surname of the child's residential parent.
- 6. The embarrassment, discomfort, or inconvenience that may result when a child bears a surname different from the residential parent's.
- 7. Parental failure to maintain contact with and support of the child
- 8. Any other factor relevant to the child's best interest.<sup>6</sup>



>> In Ohio, there is a *common law right* to change one's name. The statutory procedure is in addition to the common law right and does not abrogate it. A person may change his or her name either by petitioning the probate court or by the simple expedient of adipting and using the new one; both procedures are equally valid in the eyes of the law.

>> House Bill 95 passed on 05/27/09. It was not taken up by the senate, during the 128<sup>th</sup> General Assembly (2009-2010) and will be reintroduced.

It will require an **applicant** to state whether:

The applicant or minor has been convicted of, pleaded guity to, or been adjudicated a delinquent child for *identify fraud*, or

Has a duty to register with the sexual offender registry, or

<sup>&</sup>lt;sup>5</sup>)"Reason for requiring the payment of filing fee and a hearing on application for change of name is to protect public from fraudulent name changes." <u>State ex re. Robinson v. Clark</u>, (1994) 91 Ohio App.3d 627, 632 N.E.2d 1393

<sup>&</sup>lt;sup>6</sup> In re Whillhite, (1999) 85 Ohio St.3d 28, 706 N.E. 2d 778.

<sup>&</sup>lt;sup>7</sup> State ex re. Robinson v. Clark, (1994) 91 Ohio App.3d 627, 632 N.E.2d 1393); It is universally recognized that a person may adopt any name he may choose so long as such change is not made for fraudulent purposes. Pierce v. Brushart (Ohio 1950) 153 Ohio St. 372, 92 N.E.2d 4, 41 O.O. 398.

<sup>&</sup>lt;sup>8</sup> State v. Hayes (Ohio Mun., 07-01-2002 119 Ohio Misc.2d 124, 774 N.E.2d 807, 1001-Ohio-4228.

Was adjudicated a delinquent child for having committed a *sexually* oriented offense or a child-victim oriented offense.<sup>9</sup>

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<sup>&</sup>lt;sup>9</sup> 11 Dist. Court of Appeals upheld denial by trial court of application of sex offender on the basis that granting the application would impede the purposes of the registration requirement and all ow the applicant to evade his past criminal history. <u>In re Name Change of Whitacre</u>, 2004-Ohio-2496.