Minor Name Change Instruction Packet

https://courts.delaware.gov/family

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MINOR NAME CHANGE INSTRUCTION PACKET

Please look for the following symbols throughout the packet. They will help guide you.

* **This Document Must Be Filed**

SAFETY CHECK **Safety Check for Domestic Violence Cases**

Fill in the Blanks or Write Information Here

1. INTRODUCTION & OVERVIEW OF SOME KEY ISSUES

Purpose of this Packet

This packet gives you information about obtaining a Minor Name Change Order in the State of Delaware and explains the steps in the process for this type of cases. Read this instruction packet very carefully. This packet does not give you legal advice. It gives you *information* about what Delaware law requires, and how the process works.

You should think about finding a lawyer to help you– whether you are the one filing the case or the one responding to it. Information on finding a lawyer (in some cases even if you have little or no money) is listed below.

If you do not have a lawyer for your case, you can represent yourself. This instruction packet will help guide you through the legal requirements and the process. There are other resources identified below that may also help you.

What if there is Domestic Violence or Abuse of a Parent or Child by the Other Parent?

SAFETY CHECK

Your safety and your child's safety are very important.

You can contact the police or seek other help if you feel endangered.

A parent who believes the parent's child has been abused by the other parent can file a Petition for Order of Protection From Abuse (PFA). For more information, you should carefully review the Protection from Abuse Civil Case Instruction Packet on the Delaware Family Court website https://courts.delaware.gov/family (There are also resources you might want to consider using in that packet and on the website).

24-hour Domestic Violence Hotlines:
New Castle County (302)762-6110
Kent & Sussex Counties (302) 422-8058

24-hour Child Abuse and Neglect Hotline: 1-800-292-9582

Who Can File for a Minor Name Change?

You can file for a minor's name change in Delaware if the following requirements are met:

- ✓ The child has been living in Delaware for AT LEAST 6 CONSECUTIVE MONTHS BEFORE filing your Petition; **AND**
- ✓ You qualify as a "legal parent" under Delaware law. You may also file if you are the legal guardian of the minor and both parents of the minor are deceased.
    - A legal guardian is one who has been appointed by a Court.
    - If you have questions about whether you are considered a parent so that you "have standing to file" a Petition for Minor Name Change, **it is a good idea to consult an attorney.**

If you are seeking to change your child's name and the father has not yet been legally established, you should file a Petition for Paternity Adjudication, Form 144. Within the paternity adjudication case, you can request that the child's name be changed. If paternity has already been established, you may file the Petition for Minor Name Change, Form 492.

There are a number of ways paternity may have been established. Here are *some* of the ways:

- The father is listed on the birth certificate;
- The father has signed a Voluntary Acknowledgement of Parentage (usually at the hospital). Typically, this is a document in which the mother and a man swear that the man is the child's biological father and the man is identified as the father on the birth certificate.
- The father has been adjudicated a parent in a court proceeding. This can be established in a Court proceeding after genetic testing (called an "adjudication of paternity" or parenthood);

- **PLEASE NOTE** that Petitioning the Court to change the name of a minor child only changes the name of the child. It does not affect parental rights.

Finding a Lawyer and Other Resources

- ***Finding a lawyer:***

  If you have questions about what options you have or what you should do, you should talk to an attorney. An attorney can represent you throughout the process.

  Another possible option is to talk over your case with an attorney and get more limited help. You could ask the attorney if he or she is willing to meet with you and answer your questions without having to hire that attorney for full representation. Before you meet with the attorney, ask what fees may be involved for such limited services.

  - You can get help with finding an attorney by visiting the Legal Help Link (LHL) at https://delegalhelplink.org. In New Castle County, Delaware Volunteer Legal Services (DVLS) provides free legal services to domestic violence victims. In Kent and Sussex Counties, Community Legal Aid Society, Inc. (CLASI) provides similar services.
  - Also, the Delaware State Bar Association (DSBA) sponsors a lawyer referral service. See www.dsba.org/resources/public-resources
  - If you choose not to have an attorney or cannot afford one, you have the right to represent yourself.

- ***Other Resources***

  Resource Center. There is a Resource Center in each county in Family Court to assist you with obtaining information and forms for your case. Family Court staff can provide help with identifying forms that you need to fill out and file. However, Family Court staff cannot give you legal advice or fill out the form for you.

Family Court:

New Castle County (302) 255-0300

Kent County (302) 672-1000

Sussex County (302) 855-7400

Delaware Volunteer Legal Services

Delaware Volunteer Legal Services and Delaware Law School, Widener University provide legal services to some victims of domestic violence seeking custody of a child. Clients must be eligible for services. Contact the Legal Help Link at the numbers provided above for an evaluation and determination of services.

Victim Advocacy Programs

Volunteer advocates, who are *not* lawyers, are available to provide supportive, non-legal services, to victims of domestic violence.

New Castle County 255-0420

Kent County 672-1075

Sussex County 856-5843

Delaware Coalition Against Domestic Violence (800) 701-0456

Domestic Violence Coordinating Council 255-0405

24-hour Domestic Violence Hotlines:

New Castle County 762-6110

Kent & Sussex Counties 422-8058

New Castle County Crisis Hotline 761-9100

Kent & Sussex Crisis Hotline (800) 262-9800

Delaware Coalition Against Domestic Violence (800) 701-0456

Domestic Violence Coordinating Council 255-0405

24-hour Child Abuse and Neglect Hotline:

1-800-292-9582

Attorney General:

New Castle County 255-0112

Kent County 739-4211

Sussex County 856-5353

2. THE PROCESS FOR MINOR NAME CHANGE CASES

IMPORTANT REMINDERS:

- You should carefully read these instructions before filling out any forms.
- All forms must be neatly filled out by hand or typed. **ONLY FILE THE FORMS INCLUDED IN THE FORMS PACKET.** Forms are available on the Delaware Family Court Website at https://courts.delaware.gov/family/ and in the Family Court Resource Centers.
    - Some forms are required for all cases. Other forms are needed only in some cases. Read the information in this part carefully so you know what you are supposed to do and when.
- The **PETITIONER** is the person who files the Petition for a Minor Name Change.
- The **RESPONDENT** is the person responding to the Petition.
- Just because you fill out the forms correctly does not necessarily mean the Court will give you (grant) what you want. It is up to *you* at the Court Hearing to prove why the Court should give you what you want.
- **Court Staff cannot give you legal advice.**

OTHER IMPORTANT TIPS:

- Keep a copy of every document and court paper.
- Keep all notes, documents and court papers together and organized in a folder with the most recent papers on top.
- Bring the folder with your papers with you every time you go to Court.
- When you file a document with the Court:
    - Always include the full case name and file and petition numbers (if there are any).
    - Bring the required number of copies of each paper and an extra copy for you to have "clocked-in." (Having a paper "clocked-in" means that the Court will stamp on the copy the time and date you filed your papers.)
    - Keep the clocked-in copy in your folder so you have proof of the time and date you filed each document.
- **Making Copies**: There is a lot of paper in a court case. Consider available options for making copies as cheaply as possible. You may make copies at the Resource Centers but there is a small fee.

- **Always bring your photo identification** with you (such as your driver's license or a state-issued photo identification card) whenever you get a Court form notarized.
    - If you do not have a photo identification, you can get one from any office of the Delaware Division of Motor Vehicles. You do not need to be a driver to obtain this identification. This website explains the process for getting a state-issued photo Id: https://www.dmv.org/de-delaware/id-cards.php
- **Mailing Documents**: When you must mail something, it is a good idea to use "certified mail, return receipt requested" so that you have proof that the other party received the mail. If you cannot afford to pay for "certified mail" you can ask for a "certificate of mailing" at the post office to prove that you mailed the envelope to the other party. You may purchase stamped envelopes at the Resource Centers and the Court will mail your Court papers for you by regular mail. You are responsible for certified mailing.

FILING FORMS TO ASK FOR A MINOR NAME CHANGE

The first step in the process is to file the required forms. This process is explained here.

- Forms are available on the Delaware Family Court Website at https://courts.delaware.gov/family/ and in the Family Court Resource Centers.

What Forms Do I Need to File? (Information on each form is given below this list).

- **You MUST FILE these forms** to ask for a Minor Name Change:

    * **A Petition for Minor Name Change, Form 492.**
        - You MUST file this form in a Minor Name Change case.
        - You must file separate petitions for each child that you are requesting a name change.
        - **Who is the Petitioner**? The parent who started the case by filing a Petition for Minor Name Change is called the Petitioner.
        - **Who is the Respondent**? The other parent is called the Respondent.

When both parents consent to the name change, one parent must be listed as the petitioner while the second parent must be listed as the respondent. However, the respondent may complete the Affidavit of Parental Consent, Form 493, which is attached to the petition. When the petition and affidavit are filed together, the Court will know that both parents consent to the name change.

Sometimes you need to identify people other than a parent as a Respondent. The U.S. and Delaware State Constitutions require that whenever a petition is filed with the Court, all who have a legal relationship to the child must be notified. By naming a person as a Respondent, you are asking the Court to notify him or her of the petition. In Minor Name Change cases, the following people should be named as Respondent(s):

- Any parent of the child;
- Any guardian of the child or the person with whom the child is living;
- Any Guardian Ad Litem of the child;
- Any organization having custody of the child (for example, the Division of Family Services).

If you fail to identify a respondent, your petition is incomplete and you may have to start the process over, including paying another filing fee.

  - The Petition must be completed in its entirety.

- If you need more space to write, **you may attach additional pages** to the Petition for Minor Name Change. Be sure to state on the Petition that you have attached more pages, so the Court and the Respondent will know to look for additional information.
- **You must sign your Petition for Minor Name Change in the presence of a Notary Public or Clerk of the Court.**

  This means you must go to a person authorized under Delaware law to verify the identity and signature of a person or authorized Court staff. A notarized document has been marked with a stamp (or "seal"), indicating that the signature on the document is legitimate. A notary must watch you sign, and then the notary places the stamp near your signature.

- If the minor child you are requesting the name change for is between the ages of 14 and 17, he or she must complete the Affidavit of Child 14 Years of Age or Older on the bottom of the second page of the petition.

* **A Custody Separate Statement, Form 346.**

  You MUST file this form in a minor name change case.

  - The Custody Separate Statement explains to the Court a child's past and present living arrangements, so the Court can determine if it has authority to decide your Petition for Minor Name Change.

* **Information Sheet, Form 240.**

  <u>You MUST file this form in a minor name change case.</u>

  - This form gives the Court general information about the parties so that the Court can notify the parties about upcoming proceedings and maintain up-to-date records.
  - The information sheet asks the Petitioner to identify the Respondent, and to provide other identifying information about the Petitioner and Respondent. This information can help the process server find and serve the Respondent.

* **Copy of the Minor Child's Birth Certificate**

  - You must file a certified copy of the child's Birth Certificate with the petition. You can contact the Office of Vital Statistics, or its equivalent, in the state where the child was born to obtain the Birth Certificate.
  - The Birth Certificate must be a certified copy.

- **Situational Forms** are needed in some cases but not others, depending on the situation:

  * **Affidavit of Parental Consent for Minor Name Change, Form 493.**

    - If the Respondent parent agrees with the requested name change, he or she should complete the Affidavit of Parental Consent for Minor Name Change, Form 493. The Petitioner may then file Form 493 with the petition.

  * **Affidavit of Parentage, Form 154.**

    - Filing this form is required if parentage has not been adjudicated as to each child. Adjudication means there is a Court order confirming the identity of the parents.
    - In cases in which the Court must adjudicate parentage, the form *must* be filed with the Court.

  * **Alias Preacipe, Form 490.**

    - If the Court is unable to serve the Respondent, the Petitioner will need to complete Form 490, with additional addresses.

  * **Affidavit that a Party's Address in Unknown, Form 241.**

    - If the Petitioner does not know where the Respondent lives or works, the Petitioner will need to complete Form 241.

  * **Instructions for Publication, Form 244.**

    - If all attempts to serve the Respondent fail, the Petitioner will need to complete Form 244 to perform newspaper publication.

* **Waiver of Rights under the Servicemembers' Civil Relief Act, Form 420.**
    - The Petitioner will need to file this form only if the Respondent is in the military.
* **Legal Guardian Court Order (*if applicable*).**
    - If the Petitioner is the legal guardian of the child by way of Court Order, a certified copy of the Court Order must be filed with the petition.
* **Parent Death Certificate (*if applicable*).**
    - If one or both parents are deceased, a certified copy of the death certificate will be needed.
    - If you are unable to get a death certificate, you may file a motion to waive the death certificate requirement. Use the **Generic Motion, Form 191**, to explain why you are unable to produce a copy of the death certificate. You should also explain in the motion what substitute proof of death you are able to provide and attach your proof. Other proof of death may include an obituary, a mass card, or memory card. The Motion will be considered by a Commissioner.

How Do I File the Forms?

- You **MUST** file the **ORIGINAL** and **ONE (1) COPY** of each form above with the Court. You file by handing in the documents to the Court.
- Make a copy of each completed form for your records.
- Have your set of copies "clocked-in" for your file. Having a paper "clocked-in" means that the Court will stamp on the copy the time and date you filed your papers. Your clocked-in copy will serve as proof of the time and date you filed the paper.

Where Do I File the Forms?

The Petition and necessary forms may be filed with the Family Court in any county in the State of Delaware. The paperwork will be transferred to the county that has jurisdiction to hear the matter **(the county where the child currently lives)**. In Kent and Sussex Counties **you may file your papers at the Resource Centers** on the first floor of the Family Court buildings.

- In New Castle County, **you may file your papers at the Resource Center** on Lower Level 1 of the Leonard L. Williams Justice Center.

- Or, if you have all of the forms completed, you do **NOT** have any questions, you have made the necessary copies, and all required notarizations have been obtained, **you may file your papers at the Central Filing and Payment Center** located on the first floor of the Leonard L. Williams Justice Center. There is no staff assistance at the Central Filing and Payment Center.

- If you file your papers by mail, the addresses for each courthouse are available on the Family Court website. The Court does **NOT** accept filings that are faxed or e-mailed.

What Are the Filing Fees?

- A filing fee is charged for each Petition. The filing fee can differ depending on the type of Petition you are filing.
- For information about fees, you can look at the Family Court website at https://www.courts.delaware.gov/forms/download.aspx?id=27108.
- Fee information is also available at the Family Court Resource Centers.
- The filing fee can be paid in cash, by credit card, by debit card, by check or by money order made payable to "Family Court." If you are filing by mail, you may only pay by check or money order.
- **FAMILY COURT WILL NOT ACCEPT YOUR PAPERS WITHOUT THE FILING FEE**. There are additional costs if you must publish notice of this action.
- **Can the fee sometimes be waived?**
  - You may be able to have the filing fees waived by the Court if your financial situation makes it difficult for you to pay the costs. If you are indigent, fill out an Affidavit in support of *Application to Proceed In Forma Pauperis* (fee waiver). **Form 257P.** This is a detailed financial information form, which requires supporting documentation of your financial situation.

Service of Process

- The delivery of the Petition for Minor Name Change and any related forms you file is called **Service of Process**.
- **Unless the Respondent's Affidavit of Parental Consent for Minor Name Change, Form 493, is filed with the petition, the Respondent must receive a copy of the Petition for Minor Name Change**. (Or, if there is more than one Respondent, each Respondent must receive a copy.)
- The way that you accomplish Service of Process depends on how much information you can give the Court about where the Respondent lives.

- Determine from the following options how Service of Process should be accomplished in your case.
  - **If the Respondent lives in Delaware and you know his or her address**, a Process Server (someone whose job is delivering Court papers) will give a copy of your Petition and other forms to the Respondent(s). This is called Personal Service. You do not need to fill out any additional paperwork.
  - If the Respondent does not live in Delaware and you know his or her address, the Court will mail your papers *via* certified mail, return receipt requested, to the Respondent(s).
    - <u>If delivery of the certified mail is unsuccessful, YOU MUST PUBLISH AT YOUR EXPENSE a legal notice of your Petition in an approved newspaper</u> in the county and state where the Respondent lives. This is referred to as Service of Process by Mail and Publication.
    - You must **first** complete an Affidavit that Address is Unknown, Form 241. The Court will notify you by mail if you need to publish notice in the newspaper.
  - If you do not know where the Respondent lives or works and therefore the Process Server cannot deliver the petition to the Respondent, <u>YOU must:</u>
    - Complete an Affidavit that a Party's Address is Unknown, Form 241; AND
    - <u>PUBLISH AT YOUR EXPENSE a legal notice of the Petition in an approved newspaper</u> in the county and state where the Respondent's last known address was located.
  - **The Publication Process**
    - Instructions on how to publish notice of a Court action are available in the Resource Centers. It is important to <u>carefully follow</u> the instructions for publication. If you do not publish the notice properly, your petition could be dismissed.
    - You <u>must publish the notice in the county where the Respondent(s) lives</u> or in the county where the Respondent's last known address was located.
    - <u>You are responsible for contacting the newspaper and paying the necessary publication fee to the newspaper</u>.
    - <u>If you must publish the notice</u>, <u>YOU must demonstrate</u> to the Court that you published the notice. The newspaper will provide you with an *Affidavit of Publication* once publication has occurred. You must file that Affidavit with the Family Court. If the Court does **NOT** receive the *Affidavit of Publication* WITHIN **30 DAYS** from the date that you filed the Affidavit that a Party's Address is Unknown (Form 241), the Court may dismiss your case and you will have to start all over again, including paying another filing fee.

- If the Respondent lives in Delaware, you may publish in the following **approved Delaware newspapers** depending on where the Respondent lives.
  - **New Castle County**

    News Journal
    950 W. Basin Road
    New Castle, Delaware 19720
    (302) 324-2500
  - **Kent County**

    Delaware State News
    110 Galaxy Drive
    Dover, Delaware 19903
    (302) 674-3600
  - **Sussex County**

    Sussex Living
    1196 S. Little Creek Road
    Dover DE 19901
    (302) 346-5444
- If the Respondent lives in another state or country and you do not know the Respondent's address, you must publish the notice in that location (not in Delaware). If you are required to publish in an out-of-state newspaper, you should select a newspaper that is widely distributed in the area where the Respondent(s) lives (or last lived if you do not know the address) **AND** the newspaper should be one the Respondent(s) would most likely read.

∗ **Filing an Answer to the Petition, Form 629.**

- Once the Respondent has been served with the Petition, the Respondent has 20 days from the date of service (the date that the Court papers are delivered to the Respondent) to respond by filing an **Answer, and or the Affidavit of Parental Consent** to the Petition for Minor Name Change. If there is more than one Respondent in your case, each Respondent must file his or her own separate Answer or Affidavit.
  - **If the respondent parent agrees with the requested name change after being served the petition, the respondent parent can file the Affidavit of Parental Consent within 20 days from the date of service.** If a respondent parent files the affidavit of consent, he or she does not have to file an answer as well. While nothing would stop them from filing one, the affidavit contains language that the filer is entering his appearance.

- In the Answer to a Petition, the Respondent must reply separately to each statement in the Petition. The Respondent can either:
    - **Admit** that a statement is true or correct; or
    - **Deny** that a statement is correct; or
    - **State** that the Respondent "**does not know**."
        - If the Respondent disagrees with a statement, he or she may also explain the reason for disagreeing.

3. HEARING WITH A COMMISSIONER

This section gives you information on going to a hearing with a Commissioner. You should read this carefully. There is additional information available on the Family Court website (https://courts.delaware.gov/family) or in the Resource Centers that you should also review carefully if you do not have an attorney representing you. Specifically, you should review a document called "Preparing for your Court Hearing," which has additional information regarding a hearing for *any* Family Court case.

- If the Petitioner fails to appear for any required hearing the Court may dismiss the matter (the case ends if this occurs).
- If the Respondent fails to appear for a hearing the Court may enter a default order granting the requests of the petitioner (if deemed appropriate by the Court).
- **All minors named on a petition for a name change that are between the ages of 6 and 17 will be required to attend the hearing. The Judicial Officer may ask these minors if they understand the nature of the proceedings and if they consent to the name change.**
- If the Judicial Officer signs the Order, you will receive 3 certified copies. It will then be your responsibility to notify the Social Security Administration.
- Petitioning the Court to change the name of a minor child only changes the name of the child. It does not affect parental rights.

Scheduling A Court Hearing

- **A hearing may be scheduled after service has been accomplished.**
- **Notification**
    - The Court will notify you when your hearing is scheduled by mailing a **Notice** to inform you of the time and date of the Court Hearing.

What If I Cannot Attend the Hearing on the Scheduled Date?

- You must attend the scheduled hearing, once you receive notice of it.
- **If you cannot attend for an unavoidable and good reason, you must notify the Court IMMEDIATELY by filing a Motion for a Continuance, Form 196.**
- In this Motion, you must state very specific reasons why you cannot attend the hearing. You must have an unavoidable reason for needing to reschedule the hearing. You cannot request a continuance simply because it is not convenient for you to attend the hearing on the scheduled day.
    - Before you file the Motion for Continuance, you must contact the Respondent or the Respondent's lawyer to obtain a position as to your request for a continuance. You will need to state in your Motion whether the Respondent agrees (consents) or disagrees (opposes) with the continuance request. If you are unable to obtain Respondent's position by the time that the Motion is filed, you will need to make a statement in the Motion that you have been unable to obtain Respondent's position on the continuance.
    - If there is a no-contact order, you should NOT contact the opposing party. In that case, bring the motion to the Court and staff will mail it for you.
    - Your motion should also include the number of times a continuance of the matter has been sought.
- Because the law is very strict when it comes to rescheduling, these motions are not always granted.
- You will be notified by the Court if your Motion for Continuance has been granted.
- Unless the Court grants a continuance, you MUST attend Court on the day of your scheduled hearing.
- **If you fail to appear at your hearing, the Court may dismiss your petition.**