

# Can I Change My Kids' Last Names?

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Dear Ask the Attorney:

I am divorced 5 years and want to change my kids' last names to my maiden name which I went back to officially after my divorce. My kids are okay with this but I heard it could be a problem. They have no relationship with their father. Can I legally change their names?

W.F.

*Our guest blogger today is **Matthew S. Coleman, Esq.**, an associate with the **Einhorn Barbarito family and matrimonial law** department. Mr. Coleman concentrates his practice in all areas of family law including divorce, child custody, LGBT issues including the dissolution of civil unions, and appellate work.*

Dear W.F.:

Thank you for your question. The decision to change a minor's last name is a very personal one, and disputes between parents over their children's surnames are all too common, especially given the diverse array of family formation in our society. Up until just recently, parents who had primary custody of their children were in potentially stronger position to have the children's names changed. A New Jersey Supreme Court case came out just this month, which alters the way a court should look at the name change of minor children.

Prior to this recent change in caselaw, the courts would decide requests to change a child's last name by the standard referred to as the "best interest of the child", but there was a presumption in favor of the custodial parent, or the parent with whom the child resided primarily. So, if you wanted to change your child's last name, and the child lived with you, the court presumed that it was in the child's best

interest, absent any proof to the contrary presented by the other parent. This was very favorable to parents who had primary custody of their children.

In the recent case, *Emma v. Evans*, the New Jersey Supreme Court changed all this. Now there is no presumption in favor of the parent with whom the child resides. As long as the parties agreed upon the name at the time of the child's birth, regardless of whether they were married, the court must determine whether a change in the child's last name is in the child's best interest. To do so, the courts are directed to look at specific factors that should be taken into account. Some of the factors were previously discussed in prior child surname cases, such as:

1. The length of time the child has used his or her given surname;
2. Identification of the child with a particular family unit;
3. Potential anxiety, embarrassment or discomfort that may result from having a different surname from that of the custodial parent; and
4. The child's preference if the child is mature enough to express it.

The Court also listed additional factors not previously discussed.

1. Parental misconduct or neglect, such as failure to provide support or maintain contact with the child;
2. Degree of community respect, or lack thereof, associated with either paternal or maternal name;
3. Improper motivation on the part of the parent seeking the name change;
4. Whether the mother has changed or intends to change her name upon remarriage;
5. Whether the child has a strong relationship with any siblings with different names;
6. Whether the surname has important ties to family heritage or ethnic identity;
7. The effect of a name change on the relationship between the child and each parent.

Many of these factors may directly relate to your present situation, such as the length of time the children have had their current last name, the children's preference should they be found mature enough, and the father's lack of any relationship with the children. These factors may all play an important role in whether or not a name change is granted. However, each case is determined by its individual facts.

Keep in mind that in instituting an action in the courts to change your children's names, you must provide notice to the other parent. With the recent changes in caselaw, the decision to change a child's name is in the discretion of the Judge who hears your matter. It is important to discuss your matter with an experienced attorney who can advise you on your particular circumstances.

*“Ask the Attorney” is a blog in which answers to your legal questions submitted to [asktheattorney@einhornlawyers.com](mailto:asktheattorney@einhornlawyers.com) may be answered. The answers to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different, therefore you should seek competent legal representation.*