

January 15, 2021

By First Class Mail or Email to:

Chief Justice Marla Luckert
Kansas Supreme Court
C/O General Counsel
jarmera@kscourts.org



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RE: District Courts' Rejection of Request for Name Change

Dear Chief Justice Luckert:

We are writing to raise awareness of problems that transgender youth and their families have encountered when attempting to lawfully change their names in Kansas district courts. Several families have contacted our office, either through our legal intake procedures or via referral from other organizations, complaining that county clerks are refusing to accept name change petitions filed *pro se* or are otherwise not following proper law and procedure. Although in some instances these involve simple misunderstandings, we are also concerned that some district court judges are providing incorrect instructions for their clerks.¹

Accordingly, we write to identify what is and is not required for transgender youth and their families to file for a legal name change, with the hope that the Supreme Court and Office of Judicial Administration can provide further instruction for clerks, judges, and other court personnel to ensure families do not encounter difficulty in the future.

I. Minors do not need legal representation to petition for a name change.

There is no law—statutory, procedural, or otherwise—requiring minors seeking name changes to be represented by an attorney. Kansas' name

¹ We note that in one instance, we brought this issue to the attention of Chief Judge Mott in Sumner County, who took quick action to ensure the error was corrected and that his clerks were instructed correctly. We thank Chief Judge Mott for this example and hope this letter provides helpful instruction to avoid such misunderstandings in the future in other courts.



change statute does not require a petitioner to have an attorney draft, sign, or file the forms on their behalf.² It does not require petitioners to be represented by counsel in order to legally change their name.³ In fact, *pro se* name changes are a common practice in Kansas: the Kansas Judicial Council and Kansas Legal Services provide *pro se* name change forms for use by the general public.⁴ The website for the Kansas Judicial Branch provides support for litigants who choose to represent themselves in Kansas courts,⁵ and self-help centers for *pro se* litigants exist in district courthouses across Kansas.⁶ Kansas custom not only allows, but welcomes self-representation in legal matters like name changes.

II. Petitions may be granted with a minor’s parents’ approval.

Parents are the proper parties to petition for a name change on their child’s behalf. Kansas’ name change statute states that Kansas district courts “shall have the authority to change the name of any person”⁷ The Kansas Court of Appeals found that “any person” includes minors, who have the capacity to sue to change their legal name under Kan. Stat. Ann. § 16-1402.⁸ Kansas’ name change statute was written to align with the common law tradition, which allowed minors to change their name legally, “so long as no fraud was detected.”⁹ A minor’s name change has only one special requirement: the action must be brought in the name of the minor by a next friend or guardian.¹⁰ It is clear from case law that parents can serve as “next friends” in a minor name change action.¹¹

² Kan. Stat. Ann. §§ 60-1401 et. seq.

³ *Id.*

⁴ <https://www.kansaslegalservices.org/node/216/kansas-name-change>;
<https://www.kansasjudicialcouncil.org/legal-forms/adult-name-change>

⁵ <https://www.kscourts.org/Public/Find-a-Form>

⁶ <https://www.kansaslegalservices.org/node/1893/no-lawyer-johnson-county-court-has-self-help-center>; <https://www.kansaslegalservices.org/node/2306/legal-self-help-center-open-wyandotte-county-district-courthouse>

⁷ Kan. Stat. Ann. § 60-1401.

⁸ *In re Morehead*, 10 Kan. App. 2d 625, 626 (1985) (“A minor may file a petition, through a next friend, to obtain a name change and there is no legal impediment to a grant of the requested change.”).

⁹ *Id.* at 626–27.

¹⁰ *Id.* at 626 (citing Kan. Stat. Ann. § 60-217).

¹¹ *Id.* at 626–28 (allowing a single widowed mother to serve as “next friend” to her son in a name change action under Kan. Stat. Ann § 60-1402 and Kan Stat. Ann. § 60-217.)



To petition for a name change in Kansas, individuals must file a Petition for Name Change¹² and a proposed Order for Name Change¹³ with the state district court. For juvenile petitioners, parents file these forms as the “next friends” of the juvenile seeking a name change. Petitioners must also provide notice, either by certified mail to “parties of interest, as prescribed by the court”¹⁴ or by publication in a newspaper,¹⁵ of their name change. Juveniles may file a parental consent form in advance of the hearing,¹⁶ or have their parent(s) appear at the hearing and consent on the record.

If a judge is “satisfied with the truth of the allegation of the petition, and that there is reasonable cause for changing the name of the petitioner, the judge *shall* so order” the name change.¹⁷

III. Clerks may not deny transgender youth and their families the opportunity to file a name change petition if their filing satisfies these basic statutory requirements.

The Fourteenth Amendment to the United States Constitution provides an individual right of access to the courts.¹⁸ Kansas law only allows courts to restrict the right to access courts as a means of deterring abusive, meritless, or frivolous filings.¹⁹ In an unpublished opinion, the Kansas Court of Appeals found that the Fourteenth Amendment also restricts Kansas courts from barring litigants from *pro se* filings.²⁰ In short, nothing in Kansas law would allow a court or its clerks to deny *pro se* transgender

¹² *Petition for Name Change*, KAN. JUD. COUNCIL, <https://www.kansasjudicialcouncil.org/legal-forms/adult-name-change/petition-name-change> (last visited Jan. 9, 2021).

¹³ *Order for Name Change*, KAN. JUD. COUNCIL, <https://www.kansasjudicialcouncil.org/legal-forms/adult-name-change/order-name-change> (last visited Jan. 9, 2021).

¹⁴ K.S.A. 60-1402(b). *Notice of Hearing by Mail*, KAN. JUD. COUNCIL, <https://www.kansasjudicialcouncil.org/legal-forms/adult-name-change/notice-hearing-mail> (last visited Jan. 9, 2021).

¹⁵ *Notice of Hearing by Publication*, KAN. JUD. COUNCIL, <https://www.kansasjudicialcouncil.org/legal-forms/adult-name-change/notice-hearing-publication> (last visited Jan. 9, 2021).

¹⁶ *Name Change*, JOHNSON CTY. DIST. CT., https://courts.jocogov.org/hc_NameChange.aspx (last visited Jan. 9, 2021).

¹⁷ Kan. Stat. Ann. § 60-1402(c) (emphasis added).

¹⁸ *Bounds v. Smith*, 430 U.S. 817 (1977); *Holt v. State*, 290 Kan. 491, 500, 232 P.3d 848 (2010).

¹⁹ *Holt v. State*, 290 Kan. at 497.

²⁰ *Lynn v. Anstaett*, No. 108,568, 2013 WL 5422344, at *9–10 (Kan. Ct. App. Sept. 27, 2013) (“We reverse and vacate the order prohibiting all *pro se* filings as being too restrictive.”).

petitioners, either juvenile or adult, the opportunity to change their name. We simply ask that Kansas' courts act in accordance with established law, and allow these petitioners their day in court.


We welcome the opportunity to speak with you further about this issue, or provide training to judges and clerks regarding this issue, if doing so would be helpful. We thank you for considering the information provided herein and for any corresponding instruction you provide as a result.

ACLU

AMERICAN CIVIL LIBERTIES UNION
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Sincerely,



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**Admitted to Practice Per Kansas
Supreme Court Rule 719*

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