

## **THE HIDDEN BATTLE: DETERMINING WHOSE LAST NAME CHILDREN BORN OUT OF WEDLOCK SHOULD BEAR**

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The parents of children born out of wedlock are faced with a multitude of important and life - altering issues. Establishing paternity, custody, visitation, child support, medical insurance and life insurance are just a few of the obvious examples. The children born out of such relationships are also fraught with numerous challenges such as confusion, alienation, embarrassment and the stigma that continues to attach to children whose parents are never married, and who no longer, or perhaps never resided together in the same household.

Beyond these obvious issues and the evident social stigmas lies the compelling, yet frequently overlooked issue of whether such children born out of wedlock should share the last name of their father or their mother. This issue is of little import when the parents are amicable and can agree on this vital issue. However, as demonstrated in this article, such is not always the case.

A potential client comes into your office. She has two children with the same father. She was never married to the father of the children, but she is aware of his identity. The client informs you that one of her children bears her last name while the other shares the last name of the father. She inquires as to whether there is anything your firm can do to rectify the situation so that both children can share in her last name. The woman also informs you that the father is adamantly opposed to her desires and that he wants both children to share his last name.

What advice can you give this potential client and what steps can your firm take to accomplish her goals? The answer depends on the case specific facts. Thus, will the child/children's best interests be promoted by sharing in the mother's or the father's last name? Who has custody of the children, either legally or defacto? Is the father adequately supporting the children financially? Does he play an active role in their lives? Has he abandoned them? How much financial and emotional support do the children receive from their mother? Is there a potential for confusion and embarrassment resulting from the children maintaining the last name of the father or of the mother? These are all questions which must be explored prior to your advising the potential client as these are the factors the Court will consider in rendering a determination on this issue.

The initial step which you must take in assisting your client subsequent to the discussion of these factors and your determination that she has a meritorious claim is to file a petition seeking to change the child or children's last name to that of the mother. The Civil Rights Law of The State of New York mandates that such an application be submitted in either the Supreme Court or the County Court. It further provides that an



