

Legal issues and family matters



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What surname should illegitimate children use? Problems and issues with RA 9255 and its implementing guidelines

Article 176 of the Family Code as originally drafted and as approved by Pres. Corazon Aquino provided that illegitimate children had to use the maiden surname of the mother with the entry for middle name left blank. However, Republic Act 9255 amended Article 176 as follows (the boldfaced portion is the amendment):

*Article 176. Illegitimate children shall use the surname and shall be under the parental authority of their mother, and shall be entitled to support in conformity with this Code. **However, illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father. Provided, the father has the right to institute an action before the regular courts to prove non-filiation during his lifetime. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.***

The Office of the Civil Registrar General then issued in May 2004 the "Rules and Regulations Governing the Implementation of R.A. 9255" (or IRR for brevity).

Based on questions asked of me and my reading of RA 9255 and its implementing rules, there are several issues that need to be clarified and addressed:

The child is still illegitimate even if the biological father's surname is used

1. Contrary to what a lot of people believe, RA 9255 does not grant legitimacy to the child. Even if the biological father allows the use of his surname, the child still remains ille-

gitimate. Parental authority still belongs to the mother, which means custody belongs to her. That is why Article 176 still makes a distinction between the legitimes (share in the inheritance) of legitimate and illegitimate children.

Can RA 9255 be undone?

2. Some women informed me that they availed of RA 9255. Later on, these women had a falling out with the biological fathers and were no longer living together or communicating. The question I have been asked is, "Can RA 9255 be undone?" That is, can the child's birth certificate be changed so that the surname will now be that of the mother?

My answer has always been that the legal remedy is Rule 108 "Cancellation or Correction of Entries in the Civil Registry". However, the problem is that RA 9255 was meant for the benefit of children so that they will not bear the stigma of illegitimacy. The courts may therefore not be inclined to grant the correction or cancellation (although as of now, I have not have read of a court decision on this matter).

3. Even before RA 9255 took effect, biological fathers have signed the back of the birth certificate in order to admit their paternity. In keeping with Article 175 (in relation to Article 172), fathers, by signing the birth certificate, need no longer execute a separate document in order to acknowledge their illegitimate children. Meaning, the issue of support and inheritance was not tied to the issue of whether the child uses the father's surname or not.

RA 9255 uses the word "may" while the IRR uses "shall"

4. Notice that the RA 9255 uses the word "may" in the portion which reads "illegitimate children may use the surname of their father if their filiation has been expressly recognized by the father through the record of birth appearing in the civil register, or when an admission in a public document or private handwritten instrument is made by the father." **May** denotes direction or permission while "shall" denotes an obligatory or mandatory nature.

RA 9255's IRR makes the use of the father's surname automatic and mandatory

Under the IRR, if the father signs the birth certificate, then AUTOMATICALLY the child will carry his surname.

For example, Rule 7.1.1 states: *"The illegitimate child shall use the surname of the father if a public document is executed by the father, either at the back of the Certificate of Live Birth or in a separate document."*

Rule 8.2 also provides that "for births previously registered under the surname of the mother", the following rule shall be followed:

Rule 8.2.1 If admission of paternity was made either at the back of the Certificate of Live Birth or in a separate public document or in a private handwritten document, the public document or AUSF shall be recorded in the Register of Legal Instruments. Proper annotation shall be made in the Certificate of Live Birth and the Register of Births as follows: "The surname of the child is hereby changed from (original surname) to (new surname) pursuant to RA 9255."

The original surname of the child appearing in the Certificate of Live Birth and Register of Births shall not be changed or deleted.

RA 9255 and its IRR as a tool of oppression against women?

Where is the mother's freedom of choice in what surname her illegitimate child will use? What if the woman decides to raise the child by her own without any help or support from the man? Unknowingly or unintentionally, the people who crafted the IRR of RA 9255 made it as a tool of oppression against women. If the biological father simply signs the birth certificate or issues a public or private document acknowledging the child, the child automatically will carry his surname, even without the mother's knowledge or consent.

For example, I know of a pregnant 18-year old girl. The girl's family wisely refused to allow the man (22 years old, jobless and irresponsible) to marry the girl. The family is taking care of the girl and planning to raise the baby by themselves without any help from the guy. But based on the IRR of RA 9255, the guy can create a lot of problems if he is able to

sign the birth certificate OR if he simply issues a document acknowledging the child. Based on the mandatory nature of the IRR, the child will automatically carry his surname, despite whatever objections the girl and her family might have.

Another case: The illegitimate child was born in the 1990's with the birth certificate carrying the mother's maiden surname. The father signed the back of the birth certificate, but from the child's birth, he never gave any financial support. The mother was forced to work overseas to support the child by herself. Recently, upon coming back to the Philippines, she discovered that her child was under the custody of the biological father and was now using his surname in school records. Why? The man and his family (who have now become interested in the child) submitted the requirements to the Local Civil Registrar. Under the mandatory nature of the IRR, the child is now using his surname, without the knowledge and/or permission of the mother!

Based on the letter and spirit of RA 9255, the woman should give her consent as to whether she wants or not her child to carry the man's surname.

The IRR is wrong because of its mandatory nature. Meaning, okay, let the man sign the birth certificate to acknowledge the child. That is for the benefit of the child with regards the issue of support and inheritance. But as to what surname that child will carry, the mother should be given the freedom to choose, whether to use the man's surname or use her maiden surname.

Sen. Loren Legarda is the principal sponsor of RA 9255. The spirit and intent of RA 9255 are certainly commendable. But the IRR as it stands now makes RA 9255 a tool for oppressing women. Without waiting for Sen. Legarda's clarification or for the NSO to act on this matter, women affected by this situation should go to court to seek relief. One option is to file a petition for declaratory relief under Rule 63 of the Rules of Court. In layman's terms, a petition for declaratory relief is asking the court to issue its legal opinion on whether the IRR exceeded the letter and intent of RA 9255. This petition can only be filed by a party who has not yet been adversely affected by the IRR.

In the case of mothers or children who have already been adversely affected by the IRR (that is, the child now carries the surname of the biological father despite the lack of knowledge or consent of the mother), a petition for certiorari under Rule 65 of the Rules of Court is the appropriate remedy.

How to be saved and go to heaven

Accept that you are a sinner and that your good works, ethical conduct or religion cannot save you. Romans 3:10, Romans 3:23

Believe on the Lord Jesus Christ that He alone can save you. Romans 6:23, Romans 10:13, Acts 16:31

Confess and repent of your sins. Luke 13:3, Isaiah 1:18

Delay not in receiving Jesus Christ into your heart.

2 Corinthians 6:2, Proverbs 27:1

Pray and ask the Lord to save you now: "Dear Lord, I believe that Christ died and shed His precious blood to save my soul. Be merciful to me a sinner, forgive my sins and save me in Jesus' name. Lord Jesus, I now accept you as my Savior. Amen."

For more info, please contact Siegfred de Guzman Evangelistic Ministries (SCGEM) at www.scgem.org