

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF [REDACTED]

[REDACTED]

In the matter of the application of

[REDACTED],

For Leave to Assume the Name of

[REDACTED].

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:

:

Index No [REDACTED]

**REPLY AFFIRMATION IN SUPPORT
OF PETITION FOR ADULT
CHANGE OF NAME**

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I, [REDACTED], an attorney duly admitted to practice before this Court, affirms as follows under penalty of perjury:

1. I am an attorney duly admitted to practice law in the courts of the State of New York, and I am counsel for Petitioner [REDACTED] in the above-captioned action. I am fully familiar with the facts and circumstances set forth herein.

[REDACTED] I respectfully submit this reply affirmation in support of Petitioner [REDACTED] [REDACTED] Petition for Adult Change of Name (the "Petition") (NYSCEF 1-NYSCEF 15).

3. For the reasons set forth below, the objections stated in the People's opposition are not reasonable and the Petition should be granted. Civil Rights Law § 63 (only reasonable objections are a basis for denial of a name change petition).

The People's Opposition Is Untimely

4. On [REDACTED], Petitioner filed the Petition and the required supporting materials with this Court. The Notice of Petition set the return date for [REDACTED]. (See NYSCEF 13.)

5. Pursuant to Civil Rights Law § 62(2), the Petition and supporting materials were served on [REDACTED] County District Attorney's Office (the "DA's Office") on [REDACTED]

██████████ and on the ██████████ County Court on May 17, 2024. “[N]otice of the [return date] shall be served. . . upon the district attorney of every county in which such person has been convicted of such felony and upon the court or courts in which the sentence for such felony was entered.”

Civil Rights Law § 62(2). (*See* Affidavits of Service, NYSCEF 16-17.)

6. Service was completed on the DA’s Office within the “sixty days prior to the [return] date” required under Civil Rights Law § 62(2). (*See* Affidavit of Service, NYSCEF 16.)

7. Under CPLR 403(b), the People’s response to the Petition was due ██████████, “at least seven days” before the return date. However, the People filed their opposition on the Petition’s return date, ██████████. (*See* NYSCEF 18). The People’s opposition is untimely and should, on that basis alone, be rejected.

The Potential for Confusion Is Not a Basis for Denial

8. In its opposition, the People argue that potential confusion may arise if the Petition is granted, which courts have agreed is *not* a sufficient basis for denial. *See In re Powell*, 95 A.D.3d 1631, 1632 (3d Dep’t 2012) (“[c]onfusion is attendant to any change of name and does not, in itself, justify denial”) (citation omitted); *Matter of Alvarado*, 166 A.D.2d 932 (4th Dep’t 1990) (“[t]he fact that confusion may result from the change of name is not a sufficient reason to deny the application”); *see also Matter of Halligan*, 46 A.D.2d 170, 172 (4th Dep’t 1974) (“[c]onfusion is a normal concomitant of any name change.”)

9. In *Powell*, the petitioner was incarcerated at the time of filing his petition as a result of a violent felony offense conviction. Even though “the District Attorney who prosecuted him, the court that sentenced him, and the agency that incarcerates him [were] all [] put on notice

. . . and have no objection to it,” the Supreme Court still denied the petition on the grounds that “the risk of confusion and deception was high”. *Powell*, 95 A.D.3d at 1632. The Appellate Division, Third Department reversed the Supreme Court’s order noting that “those grounds [were] insufficient to warrant denial,” and granted the petition. *Id.* at 1632-33.

10. Here, the People assert that “grave problems” would arise from the confusion that might follow from a court-ordered name change. (Opp’n at 2.) The People’s assertion is entirely misplaced. The whole point of the notification requirement to the New York State Department of Corrections and Community Supervision (“DOCCS”) under section 64 of the Civil Rights Law is to permit DOCCS to update its records and link a new name to the pre-existing criminal history following the court-approved name change. Civil Rights Law § 64 (“[if] the petitioner stands convicted of a violent felony . . . the clerk of the court . . . shall serve . . . a copy of such certified order to the division of criminal justice services at its office in the county of Albany”); *see In re Madison*, 261 A.D.2d 738 (3rd Dep’t 1999) (DOCCS did not oppose an inmate’s change of name petition but it was denied by the Supreme Court on the grounds that it would result in “recordkeeping problems for various governmental agencies,” the decision was reversed on appeal); *see also In re Jackson*, 144 A.D.3d 1539, 1540 (4th Dep’t 2016) (DOCCS took no position on an inmate’s change of name application, which was denied by the Supreme Court and reversed on appeal.) Should the Court approve this Petition, Petitioner’s new name will be cross-referenced with her prior criminal record to maintain a clear and traceable identity history. Any law enforcement encounter would thus readily reveal that Petitioner has a criminal history. In light of these safeguards, and the Legislature’s decision to provide a path to a name change for convicted felons, there is no valid law enforcement rationale to deny the Petition.

11. The People also offer up the potential for confusion to judgment creditors if the Petition is granted. (Opp'n at 3.) This concern is likewise misplaced. Section 63 of the Civil Rights Law formerly addressed this issue by requiring publication of the notice of the name change in newspapers in the county in which the petition was filed and in any other county wherein such person was convicted. The Legislature has since determined that the requirement should be amended to eliminate the requirement for publication while still making it a matter of public record through the court filings unless the petition is sealed under Civil Right Law § 64-a. Civil Right Law § 63 (2021). The Legislature thus determined that further notice in these circumstances is not necessary to address the possibility of confusion to creditors and other interested persons.

12. The People's several assertions about confusion lack substance. If confusion were an actual issue following court-approved name changes for convicted felons, the People would have offered up actual examples of such purported confusion. The 'parade of horrors' that the People suggest would follow a name change here is empty rhetoric and should be disregarded.

A Name Change Is Appropriate in These Circumstances

13. The People wrongly suggest that a certificate of disability is the only relief available to a person granted parole who wishes to pursue a path of rehabilitation. (Opp'n at 3.) If that were true, the Legislature would have prohibited name change applications for convicted felons. But that is decidedly not the case, as current law provides a lawful means for parolees to change their names provided the appropriate procedures are followed.

14. Indeed, name changes for women whose convictions arise out of circumstances of domestic abuse have been looked upon favorably by courts. According to a legal service

organization that has assisted in securing counsel for victims of domestic violence, the People's opposition in this case is the first and only time this organization has encountered an actual opposition from a prosecutor's office with regard to a name-change petition for a woman with a criminal record.¹

15. The People's gratuitous comment about why Petitioner did not simply take the name of her husband when she remarried reveals that the simple fact of a name change is unobjectionable. (Opp'n at 3.) Indeed, it could not be, given the safeguards eliminating confusion that follow from the notification process to DOCCS. The agenda, sadly, appears to be a desire to continue to punish Petitioner for a crime to which she pleaded guilty and served a sentence of approximately 25 years. Contrary to the People's irrational assertion, through her plea of guilty, and the punishment that followed, Petitioner indeed accepted responsibility. Of course, the Parole Board, in granting parole, necessarily took into account whether or not Petitioner has accepted responsibility and made the determination to grant parole. The People's speculation about the appellate issues raised, about which they provide no detail, should be disregarded.

16. Finally, the People broadly assert, without citation or support, that the "police never found any evidence of domestic abuse." (Opp'n at 3.) It is completely unclear how the Assistant District Attorney, who does not appear to have been involved in the prosecution which happened more than 25 years ago, could possibly know this fact. Against this baseless assertion, we have Petitioner's sworn statement that she was indeed abused by her deceased husband.

¹ Sanctuary for Families is an organization with substantial experience assisting women with name change applications. Sanctuary for Families has not experienced an opposition such as here on the cases where they have helped arrange for counsel to appear for petitioners seeking name changes.

Further, it is our understanding that the materials submitted in support of Petitioner’s application

_____ for parole documented the spousal abuse that Petitioner suffered. We understand that no member of _____ family, following notice, voiced an objection to Petitioner’s parole application.

17. Petitioner, who is now _____ of age, and having been more than amply punished for a crime to which she pleaded guilty, simply wishes to live out the remainder of her life with a name that does not continue to cause her pain and anguish.

18. Should the Court have any questions about the merits of the Petition, we would welcome the opportunity to appear in person with the Petitioner to address any such questions.

19. We respectfully request that the Petition be granted.

Dated: New York, New York

Respectfully submitted,

WORD COUNT CERTIFICATION

Based on the word-count function of the word-processing system used to prepare this document, this document contains 1,541 words, excluding the caption and signature block. I certify that the foregoing is true and correct to the best of my knowledge.

[REDACTED]

FILED:

NYSCEF DOC.

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