

ADMINISTRATIVE ORDER NO. 1

Series of 2016

**REVISED IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9255
(An Act Allowing Illegitimate Children to Use the Surname of Their Father,
Amending for the Purpose Article 176 of Executive Order No. 209, Otherwise Known
as the "Family Code of the Philippines")**

As mandated by Republic Act No. 10625, the Civil Registrar General promulgates the Revised Implementing Rules and Regulations of Republic Act No. 9255 based on the Supreme Court Ruling in the case of "Grande vs. Antonio ", G.R. 206248 dated February 18, 2014.

Rule 1. Coverage

This Revised Implementing Rules and Regulations shall apply to all illegitimate children born during the effectivity of R.A. No. 9255;

Rule 2. Definition of Terms

As used in this Revised Implementing Rules and Regulations, the following terms shall mean:

2.1 Public Document refers to the Affidavit of Admission of Paternity and other public documents enumerated under Memorandum Circular 04-12 dated October 18, 2004 attached as Annex A.

2.2 Private Handwritten Instrument is an instrument in the handwriting of the father and duly signed by him where he expressly recognizes the paternity of the child during his lifetime.

2.3 Affidavit to Use the Surname of the Father (AUSF) is an instrument executed in order to use the surname of the father . The AUSF is a registrable document.

2.4 Local Civil Registry Office (LCRO) is a department in the city or municipal government mandated to perform civil registration functions.

2.5 Philippine Foreign Service Post (PFSP) refers to all Philippine embassies , missions, consulates general and other foreign service establishments maintained by the Department of Foreign Affairs (Section 5[k] of Republic Act No. 7157 (An Act Revising Republic Act No. 708, as amended).

As used in this Revised Implementing Rules and Regulations, the PFSP shall refer only to Embassies and Consulates General of the Philippines abroad. The Embassy is headed by an Ambassador while the Consulate General is headed by a Consul General. The Ambassador is the head of the PFSP while a Consulate General is headed by the Consul General who has also Consul and/or Vice Consul to assist him in the performance of the consular functions. An Embassy has a Consular Section and this is under the Consul General who supervises the consular functions of the Embassy.

2.6 The Civil Registrar General (CRG) is the head of the Philippine Statistics Authority who has the power to issue orders and instructions to the Local Civil Registrars regarding the performance of their duties.

2.7 Guardian refers to a person lawfully invested with the power, and charged with the duty, of taking care of one who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs. The term "guardian" also refers to those authorized to exercise substitute parental authority over the child in default of parents or a judicially-appointed guardian (Title IX, Family Code). Those exercising substitute parental authority are the following:

- 1) The surviving grandparent, as provided in Article 214, Family Code of the Philippines;
- 2) The oldest brother or sister, over 21 years of age, unless unfit or disqualified (Article 216(2), Family Code; and
- 3) The child's actual custodian , over 21 years of age , unless unfit or disqualified, as provided in Article 216(3), Family Code of the Philippines.

2.8 Certificate of Live Birth (COLB) or Municipal Form No. 102 is the prescribed form used for the declaration of facts and circumstances surrounding the birth of a person for purposes of registration.

2.9 Report of Birth (ROB) is the prescribed form used for the declaration of facts and circumstances surrounding the birth of a person born abroad to Filipino parentis for purposes of registration.

Rule 3. What to File

The following documents shall be filed at the LCRO or PFSP for registration:

- 3.1 Affidavit of Admission of Paternity
- 3.2 Private Handwritten Instrument
- 3.3 Affidavit to Use the Surname of the Father

Rule 4. Who may file

The following persons are authorized to file at the LCRO or PFSP:

- 4.1 The father, mother, the person himself, if of age, or the guardian, may file the Affidavit of Admission of Paternity.
- 4.2 The father, mother, the person himself, if of age, or the guardian, may file the Affidavit to Use the Surname of the Father.
- 4.3 The father shall personally file the Private Handwritten Instrument (PHI), if the proof of filiation is through a PHI, at the LCRO/PFSP for registration.

The mother, the person himself, if of age, or the guardian, may file the PHI if the father is already deceased. The PHI can be accepted provided there are supporting documents to prove filiation.

Rule 5. Where to register

For births that occur in the Philippines, the Affidavit of Admission of Paternity, Private Handwritten Instrument or Affidavit to Use the Surname of the Father executed in the Philippines shall be registered at the LCRO of the place of birth.

For births that occur within or outside the Philippines, the Affidavit of Admission of Paternity, Private Handwritten Instrument or Affidavit to Use the Surname of the Father executed outside the Philippines shall be registered at the PFSP of the country of residence, or where there is none, to the PFSP of the country nearest the place of residence of the party concerned.

For births that occur outside the Philippines, the Affidavit of Admission of Paternity, Private Handwritten Instrument, or Affidavit to Use the Surname of the Father executed in the Philippines shall be registered at the Local Civil Registry Office of the place of execution.

Rule 6. When to Register

The Affidavit of Admission of Paternity, Private Handwritten Instrument, or the Affidavit to Use the Surname of the Father shall be registered within twenty (20) days from the date of execution. Otherwise, the rules on delayed registration under Administrative Order No. 1, Series of 1993 (IRR of Act. No. 3753 and Other Laws on Civil Registration) shall apply.

Rule 7. How to Register

7.1 The City/Municipal Civil Registrar (C/MCR), Consul General, Consul, or Vice Consul shall examine the completeness and correctness of entries in the Certificate of Live Birth (COLB)/Report of Birth (ROB), and the supporting documents. If there are inconsistencies, the C/MCR, Consul General, Consul, or Vice Consul, shall not accept the documents for registration.

7.2 Accept the following documents for registration:

- COLB/ROB
- Affidavit of Admission of Paternity
- Private Handwritten Instrument
- Affidavit to Use the Surname of the Father

7.3 Record the entries of the COLB/ROB in the Register of Births, Affidavit of Admission of Paternity, Private Handwritten Instrument and the Affidavit to Use the Surname of the Father in the Register of Legal Instruments.

7.4 Annotate the COLB/ROB and enter the annotation on the Remarks portion of the Register of Births.

7.5 Distribute the annotated COLB/ROB, registered Affidavit of Admission of Paternity, Affidavit to Use the Surname of the Father, or Private Handwritten Instrument including any supporting document as follows:

- first copy to the CRG;
- second copy to the LCRO/PFSP where the event was registered;
- third copy to the registrant/owner of the document;
- fourth copy shall be retained for filing by the LCRO/PFSP.

7.6 Issue certified copies of COLB/ROB or certified transcription (LCR Form 1A) with annotations and certified copies of the Affidavit of Admission of Paternity, AUSF, and Private Handwritten Instrument.

Rule 8. Effects of Recognition

8.1 As a rule, an illegitimate child not acknowledged by the father shall use the surname of the mother.

8.2 An illegitimate child acknowledged by the father shall use the surname of the mother if no AUSF is executed.

8.3 An illegitimate child aged 0-6 years old acknowledged by the father shall use the surname of the father, if the mother or the guardian, in the absence of the mother, executes the AUSF.

8.4 An illegitimate child aged 7 to 17 years old acknowledged by the father shall use the surname of the father if the child executes an AUSF fully aware of its consequence as attested by the mother or guardian.

8.5 Upon reaching the age of majority, an illegitimate child acknowledged by the father shall use the surname of his father provided that he executes an AUSF without need of any attestation.

Rule 9. Annotations

9.1 For births not yet registered:

9.1.1 Without Affidavit to Use the Surname of the Father

a. If Affidavit of Admission of Paternity at the back of the COLB is executed and there is no AUSF executed by the mother or the person himself, the child shall be registered under the surname of the mother. There shall be no annotation on the COLB. However, there shall be annotation on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity)."

b. If a separate Affidavit of Admission of Paternity is executed and there is no AUSF executed by the mother or the person himself, the child shall be registered under the

surname of the mother. There shall be an annotation on the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity) under (Registry No. of the Affidavit of Admission of Paternity)."

c. If a Private Handwritten Instrument is executed and there is no AUSF executed by the mother or the person himself, the child shall be registered under the surname of the mother. There shall be an annotation on the COLB/ROB and on the Remarks Column on the Register of Births as follows:

"Acknowledged by (name of father) under (Registry No. of the Private Handwritten Instrument)."

9.1.2 With Affidavit to Use the Surname of the Father

a. If Affidavit of Admission of Paternity at the back of the COLB is executed and an AUSF is executed by the mother or the guardian, in the absence of the mother, or the person himself, the child shall be registered under the surname of the father. There shall be no annotation on the COLB. However, there shall be annotation on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity) pursuant to RA 9255."

b. If Affidavit of Admission of Paternity is executed in a separate public document, and an AUSF is executed by the mother or the guardian, in the absence of the mother, or the person himself, the child shall be registered under the surname of the father. There shall be an annotation on the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity) under (Registry No. of the Affidavit of Admission of Paternity)" pursuant to RA 9255."

c. If a Private Handwritten Instrument is executed and an AUSF is executed by the mother or the guardian, in the absence of the mother or the person himself, the child shall be registered under the surname of the father. There shall be an annotation on the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) under (Registry No. of the Private Handwritten Instrument)" pursuant to RA 9255."

9.2 For births previously registered under the surname of the mother and not acknowledged by the father

9.2.1 Without Affidavit to Use the Surname of the Father

a. If Affidavit of Admission of Paternity is executed in a separate public document and there is no AUSF executed by the mother or the guardian, in the absence of the mother, or the person himself, the COLB/ROB and on the Remarks Column of the Register of Births shall be annotated as follows :

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity) under (Registry No. of the Affidavit of Admission of Paternity)."

b. If a Private Handwritten Instrument is presented and there is no AUSF executed by the mother or the guardian , in the absence of the mother , or the person himself , the COLB/ROB and on the Remarks Column of the Register of Births shall be annotated as follows:

"Acknowledged by (name of father) under (Registry No. of the Private Handwritten Instrument)."

9.2.2 With Affidavit to Use the Surname of the Father

a. If Admission of Paternity is executed in a separate public document, and an AUSF is executed by the mother or the guardian, in the absence of the mother, or the person himself, the child shall use the surname of the father. There shall be an annotation in the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) on (date of execution of the Affidavit of Admission of Paternity) under (Registry No. of the Affidavit of Admission of Paternity). The child shall be known as (full name of the child) pursuant to RA 9255."

b. If a Private Handwritten Instrument is presented and an AUSF is executed by the mother or the guardian, in the absence of the mother, or the person himself, the child shall use the surname of the father. There shall be an annotation on the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"Acknowledged by (name of father) under (Registry No of the Private Handwritten Instrument)." The child shall be known as (full name of the child) pursuant to RA 9255."

9.3 For births previously registered using the surname of the mother and the child is acknowledged by the father

9.3.1 With Affidavit to Use the Surname of the Father

If the AUSF is executed by the mother or the guardian, in the absence of the mother, or the person himself, the child shall use the surname of the father. There shall be an annotation on the COLB/ROB and on the Remarks Column of the Register of Births as follows:

"The child shall be known as (full name of the child) pursuant to RA 9255."

Rule 10. Separability Clause

If any provision of this Revised Implementing Rules and Regulations is declared void or unconstitutional, the remaining portions or provisions thereof shall not be affected by such declaration.

Rule 11. Repealing Clause

All circulars, memoranda, rules and regulations or parts thereof inconsistent with the provisions of this Revised Implementing Rules and Regulations are hereby repealed or modified accordingly.

Rule 12. Effectivity

This Revised Implementing Rules and Regulations shall take effect 15 days after its publication in a newspaper of general circulation in the Philippines.

Approved this 22nd of March 2016.

LISA GRACE S. BERSALES, Ph.D.

National Statistician and Civil Registrar General

Note:

In *Grande vs. Antonio* [G.R. 206248, February 18, 2014] the Supreme Court ruled that an illegitimate child has the right to choose whether to use the surname of the mother or the father. An **acknowledgment of paternity** by the father **cannot compel** the use of the father's surname. **The right to choose** which surname to use **lies with the child**, not with the mother or the father.

In this case, the appellee father wanted the appellant mother's two minor children to change surnames. The Court of Appeals sustained the RTC's order to have the children's surname changed to 'Antonio'. But the Supreme Court decreed that the use of the father's surname in Art. 176 of the Family Code is *permissive*, not mandatory. Illegitimate children "may" use their father's surname means that they can use their father's surname if they so choose. And their father's acknowledgment of paternity cannot force them to use his surname.

The Supreme Court said through Justice Presbitero J. Velasco, Jr.: "To conclude, the use of the word "shall" in the IRR of RA 9255 is of no moment. The clear, unambiguous, and unequivocal use of "may" in Art. 176 rendering the use of an illegitimate father's surname discretionary controls, and illegitimate children are given the choice on the surnames by which they will be known."

The Court struck down the Implementing Rules and Regulations of RA 9255. As a result, the Philippine Statistics Authority issued Administrative Order No. 1, Series of 2016 (Revised Implementing Rules and Regulations of RA 9255, above) on 22 March 2016 to conform to the ruling in *Grande vs. Antonio* [G.R. 206248, February 18, 2014].