

## FAMILY LAW UPDATE

In *Grande v. Antonio* (G.R. No. 206248, February 18, 2014), the Supreme Court struck down the mandatory provisions in the Implementing Rules and Regulations (IRR) of Republic Act No. 9255 requiring illegitimate children to use their father's surname after meeting certain requirements of recognition.

The High Court ruled that Article 176 of the Family Code gives illegitimate children the right to decide to use the surname of their father or not. The Court clarified that it is neither the father nor the mother who is granted such right but the child.

### Original Provision

Previously, Article 176 of the Family Code read as follows:

*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. The legitime of each illegitimate child shall consist of one-half of the legitime of a legitimate child.*

The above provision required illegitimate chil-

## EVEN WITH FATHER'S RECOGNITION, ILLEGITIMATE CHILD RETAINS RIGHT TO CHOOSE OWN SURNAME

dren to carry the surname of their mother although they may establish their filiation to their father separately.

In 2004, this provision of the Family Code was amended by RA 9255 to read as follows:

*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 their 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.* (emphasis supplied)

### Confusion

The confusion arose after the Office of Civil Registrar General released the IRR of RA 9255 containing the following mandatory provisions:

*Rule 7. Requirements for the Child to Use the Surname of the Father*

*7.1 For Births Not Yet Registered*

*7.1.1 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.*

*7.1.2 If admission of paternity is made through a private instrument, the child shall use the surname of the father, provided the registration is supported by the following documents:\*\*\*\**

*7.2. For Births Previously Registered under the Sur-*

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*name of the Mother*

7.2.1 *If filiation has been expressly recognized by the father, **the child shall use** the surname of the father upon the submission of the accomplished AUSF [Affidavit of Use of the Surname of the Father].*

7.2.2 *If filiation has not been expressly recognized by the father, **the child shall use** the surname of the father upon submission of a public document or a private handwritten instrument supported by the documents listed in Rule 7.1.2.*

#### *Rule 8. Effects of Recognition*

##### *8.1 For Births Not Yet Registered*

8.1.1 *The **surname of the father shall** be entered as the last name of the child in the Certificate of Live Birth. The Certificate of Live Birth shall be recorded in the Register of Births.\*\*\*\* (emphasis supplied)*

In *Grande*, the father has already remarried when his illegitimate children were born and was not able to expressly recognize them as his own in the Records of Birth in the Civil Registry.

When the mother left for the United States with the two boys, the father filed a Petition for Judicial Approval of Recognition of Paternity with prayer for parental custody and cor-

rection/change of surname of the minors.

The trial court granted the father's petition but the Court of Appeals modified the decision which gave full custody to the mother but directed the Civil Registrar General to enter the surname of the father as that of the children.

In making such ruling, the appellate court maintained that the legal consequence of the recognition made by the father compels the use by the children of their father's surname.

Acting on the partial appeal by the mother, the Supreme Court ruled that the children have the right to choose the surname by which they will be known, explaining that the use of the word "may" in Article 176 of the Family Code as amended by RA 9255 shows that an acknowledged illegitimate child is under no compulsion to use the surname of his father as the same is merely permissive and operates to confer discretion upon the illegitimate children.

Given that administrative issuances cannot amend a legislative act, the above cited Rules of RA 9255 were consequently voided. . LF©April 4, 2014

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